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No.

IN THE

Supreme Court of the United States

OCTOBER TERM 1981

DEAN J. McDONALD, as Collection Agent
for the Trustees of the
National Electrical Industry Fund
Petitioner

v.

HAMILTON ELECTRIC, INC. OF FLORIDA
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Whether an employer-member of a multiemployer bargaining unit, who has given written authority to the multiemployer association to represent the employer for "all matters contained in or pertaining to the current approved labor agreement", and also binds itself to comply with "all of the terms and conditions of employment contained in the [current approved agreement] and all approved amendments thereto", can avail itself of all the benefits flowing from that agreement and amendments thereto, but repudiate any provision of the agreement or amendments thereto that is a "permissive" rather than a "mandatory" subject of bargaining under the Act.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
I. The Decision Below Poses A Serious Threat To The Federal Labor Policy Favoring The Stability Of Multiemployer Bargaining Units As Enunciated By This Court And The National Labor Relations Board	6
II. The Decision Below Raises A Conflict Between The Eleventh And Sixth Circuits	10
III. The Interpretation Of The Ratification Issue In The Decision Below Raises A Conflict Between The Eleventh And Tenth Circuits	12
CONCLUSION	13
APPENDIX	
Opinion of the Court of Appeals	1a
Decision and Order of District Court	10a
Order of the Court of Appeals Denying Rehearing..	18a
Plaintiff's Exhibit A—Agreement between Florida West Coast Chapter, NECA, and Local 915, International Brotherhood of Electrical Workers, Tampa, Florida	19a

TABLE OF AUTHORITIES

	Page
CASES:	
A.S. Brooks Electric, Inc. 233 NLRB 889 (1977)	8
Amado Electric, Inc. 238 NLRB 37 (1978)	8
Arco Electric Co. 237 NLRB 708 (1978) *enfd.* 618 F.2d 698 (10th Cir. 1980)	12
Arco Electric Co. v. NLRB 618 F.2d 698 (10th Cir. 1980)	12,13
Bonanno Linen Service v. NLRB ___ U.S. ___, 102 S. Ct. 720 (1982)	7,9,10
Central New Mexico Chapter, NECA 152 NLRB 1604 (1965)	8
Interstate Construction Company 227 NLRB 271 (1977)	8
NLRB v. Truck Drivers, Local 449 (Buffalo Linen) 353 U.S. 87 (1957)	7,10
NLRB v. Wooster Division of Borg-Warner Corp. 356 U.S. 342 (1958)	5,6,9
Nelson Electric 241 NLRB 545 (1979), *enfd.* 638 F.2d 965 (6th Cir. 1981)	8,10
Nelson Electric v. NLRB 638 F.2d 965 (6th Cir. 1981)	10,11
Nordstrom, Inc. 229 NLRB 601 (1977)	9
Northern Nevada Chapter, NECA 131 NLRB 550 (1961)	8
Retail Associates 120 NLRB 388 (1958)	7,10
Sheet Metal Workers Union 144 NLRB 773 (1963)	11
Stein Printing Co. 204 NLRB 17 (1973)	11
Wayne Electric, Inc. 226 NLRB 409 (1976)	8
STATUTES:	
29 U.S.C. 185(a)	2
29 U.S.C. 158(a)(5)	2
MISCELLANEOUS:	
U.S. Bureau of Labor Statistics, Dept. of Labor Bull No. 2065, Characteristics of Major Collective Bargaining Agreements—January 1, 1978 (1980)	6

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HAMILTON ELECTRIC, INC. OF FLORIDA
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The petitioner Dean J. McDonald respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on January 22, 1982.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 666 F.2d 509 and appears in the Appendix hereto at pp. 1a-9a. The Court's denial on March 3, 1982, of the petitioner's petition for rehearing appears in the Appendix hereto at p. 18a. The decision of the District Court appears in the Appendix hereto at pp. 10a-17a.

JURISDICTION

The judgement of the Court of Appeals for the Eleventh Circuit was entered on January 22, 1982. Petitioner's timely-filed petition for rehearing was denied on March 3, 1982, and this petition is being filed within 90 days of that date. This Court's jurisdiction is being invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

United States Code, Title 29.

Section 185(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 158(a) It shall be an unfair labor practice for an employer —

* * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).

STATEMENT OF THE CASE

This case involves an order of a panel of the Eleventh Circuit Court of Appeals, holding that an employer who granted a multiemployer bargaining unit representative authority to negotiate collective bargaining agreements with local labor unions on its behalf, is not bound by permissive provi-

sions of a collective bargaining agreement negotiated by that representative, as opposed to mandatory provisions, even where the employer accepted and enjoyed the benefits of all other provisions of the agreements.

Respondent, Hamilton Electric, Inc. (Hamilton), a Florida corporation, is an electrical contractor in the building and construction industry. During all times material to the case, Hamilton has utilized union labor from local unions of the International Brotherhood of Electrical Workers (IBEW). Rather than negotiate individual collective bargaining agreements between itself and the IBEW locals, Hamilton has historically signed Letters of Assent (called Assents A and B) which bound it to collective bargaining agreements entered into between the respective IBEW locals and the Florida West Coast Chapter of the National Electrical Contractors Association (FWCC, NECA). Such Letters of Assent are utilized by IBEW locals throughout the United States and Canada.

The Letters of Assent signed by Hamilton are of two types—A and B. The Letter of Assent A has no specific termination date. The Letter of Assent A authorizes the Association to act as its collective bargaining representative for "all matters contained in or pertaining to the current approved labor agreement" between the FWCC and the IBEW local (App. pp. 2a-3a, note 2). This Letter of Assent A can be terminated by the signing party only by giving written notice of termination to the Association and local union at least one hundred fifty days prior to the anniversary date of the then-current labor agreement. That notice was not given.

The Letter of Assent B provides that the signing party agrees "to comply with all of the terms and conditions of employment contained in the [current approved agreement] and all approved amendments thereto" (App. pp. 2a-3a, note 2). A Letter of Assent B has a stated expiration date, but automatically renews itself unless 60 days notice of intent not to renew is given. Should the then-current collective bargaining agreement expire prior to that date, the assenting party is bound to the new collective bargaining agreement entered into by the Association and the local union so long as the Letter of Assent B remains in effect.

Hamilton signed Letters of Assent A with IBEW Local Unions No. 915 Residential and No. 915 Inside on May 6, 1974. Hamilton signed Letters of Assent B for IBEW Local No. 941 Inside on November 1, 1976, and one for IBEW Local No. 308 Inside.

Subsequent to the execution of these Letters of Assent and while they were still in effect, NECA and the IBEW negotiated several new contractural provisions relating to increased pension funds beneficial to the employees and other provisions beneficial to the employers which were incorporated as amendments to the local agreements. Among these provisions was one creating the National Electrical Industry Fund (NEIF) which required employers who were parties by Assent A or B or otherwise to the NECA-IBEW agreements to contribute 1% of their gross payroll to an industry fund to be put in trust and used for the benefit of the employers and employees.[1]

Upon receipt of notice of these amendments, Hamilton notified the IBEW locals that it would not contribute to the NEIF. However, Hamilton continued to utilize labor from the IBEW locals and abide by all other terms and conditions of the collective bargaining agreements including those created by the 1977 amendments.

Petitioner Dean J. McDonald is a collection agent for the Trustees of the NEIF. This suit was brought by Mr. McDonald under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. §185(a), to recover those contributions due the NEIF pursuant to the amended terms of the collective bargaining agreements to which Hamilton assented.

The District Court held that Hamilton was bound by the industry fund provision as a part of the entire agreement as amended. The District Court's decision was premised upon two

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[1] On May 17, 1982, the United States Court of Appeals for the Fourth Circuit in *NCA v. NECA*, Case Nos. 80-1808, 80-1809, affirmed a holding of the District Court that the NEIF provision violates the antitrust laws. The antitrust issue was not litigated in the present case and thus is not now before this Court. A request for rehearing *en banc* is being filed in the Fourth Circuit case. Should that be unsuccessful, a petition for writ of certiorari will be filed with this Court.

alternative grounds. The first of these was that the Letters of Assent signed by Hamilton granted the Association authority to bind Hamilton to the 1977 amendments of the collective bargaining agreements, including the amendment creating the industry fund. In addition to this, the District Court concluded that by continuing to accept the benefits flowing from the collective bargaining agreements subsequent to their amendment, Hamilton ratified the 1977 amendments including the NEIF provision and was thus bound by them.

A three member panel of the U.S. Court of Appeals for the Eleventh Circuit reversed the judgment of the District Court, disagreeing with both stated grounds for the District Court's opinion.

The Court looked at the applicable Letters of Assent (A and B), and concluded that what amounts to an unqualified grant of authority to negotiate a multiemployer agreement did not bind the authorizing employer to "permissive" as opposed to "mandatory" provisions of any agreement reached. The Court made this decision in the face of the uncontroverted fact that Hamilton in its "A" assent designated the Association as Hamilton's collective bargaining agent for "all matters contained in or pertaining to the current approved labor agreement" and in its "B" assent Hamilton was bound to "all of the terms and conditions of "employment contained in the . . . agreement and all amendments thereto".

The Court below concluded that the assented-to collective bargaining agreements were "generally" limited to mandatory subjects of bargaining, citing *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 (1958), and therefore any "permissive" provision could be repudiated. The Court made no mention of the fact that the assented-to agreements contained several other provisions relating to permissive subjects of bargaining.[2] Having reached this untenable conclusion, the court below them labeled the industry fund a permissive rather

[2] These include provisions relating to permissive subjects of bargaining such as the scope of the bargaining unit, Art. II, Sec. 3 (App. pp. 22a-23a); interest arbitration, Art. I (App. pp. 20a-22a); and the right of the union to impose internal discipline, Art. 2, Sec. 6 (App. pp. 25a). (Appendix pages

(footnote continues)

than mandatory subject of bargaining, and concluded that it was not binding on Hamilton.

The court below did so despite the acknowledged fact that Hamilton embraced and continued to enjoy the benefits of the amended collective bargaining agreements, except for its obligation to pay into the industry fund. Since many collective bargaining agreements provide for industry funds and the Board and courts have found these provisions to be lawful and enforceable, the reasoning behind the Court's conclusion is unclear. In any event, the conclusion is erroneous. It is plain under *Borg-Warner* that once there is agreement on a permissive subject of bargaining, and that agreement is incorporated in a total collective bargaining agreement, the permissive provision is just as lawful and enforceable as the provisions which are the subjects of mandatory bargaining.

REASONS FOR GRANTING THE WRIT

I

The Decision Below Poses A Serious Threat To The Federal Labor Policy Favoring The Stability Of Multiemployer Bargaining Units As Enunciated By This Court And The National Labor Relations Board

Multiemployer bargaining has long been utilized in many industries throughout this country,[3] and has been the accepted method of negotiating in the electrical construction industry for many years.

As this Court has long recognized, multiemployer bargaining offers numerous advantages to both employers and unions.

(*footnote continued*)

19a-50a are a reproduction of one of the assented-to agreements which was introduced at trial as Plaintiff's Exhibit A.)

[3] A recent survey indicated that of 1,536 collective bargaining agreements covering 1,000 or more employees surveyed, 648 were multiemployer agreements. U.S. Bureau of Labor Statistics, Dept. of Labor Bull No. 2065, Characteristics of Major Collective Bargaining Agreements—January 1, 1978, at 12, table 1.8 (1980).

It permits smaller employers to compete on a more equal footing with large unions, fosters the development of industry-wide employee benefits programs, encourages flexibility of bargaining positions, and enhances the efficiency of the bargaining process. *Bonanno Linen Service v. NLRB*, ____ U.S. ____, 102 S.Ct. 720, 723, n. 3 (1982).

In recognition of these benefits and of the frequency of multiemployer bargaining and its role in reducing industrial strife, federal labor policy has long favored the stability of multiemployer bargaining units. This Court has stated that multiemployer bargaining is "a vital factor in the effectuation of the national policy of promoting labor peace through strengthened collective bargaining". *NLRB v. Truck Drivers, Local 449 (Buffalo Linen)*, 353 U.S. 87, 95 (1957); accord: *Bonanno Linen Service v. NLRB, supra.*

This policy of encouraging multiemployer unit stability is furthered by stringent rules limiting withdrawal from such units. *E.g., Bonanno Linen Service v. NLRB, supra; Retail Associates*, 120 NLRB 388 (1958).

The interpretation of the Letter of Assent A contained in the decision below provides a major threat to the stability of multiemployer bargaining which this Court and the Board have expressly sought to foster. Under the holding in the decision below, an employer who has assigned his bargaining rights to a multiemployer bargaining agent may make a series of piecemeal withdrawals from the agreement negotiated by that agent whenever it contains a provision not to his liking which pertains to a permissive subject of bargaining. The destabilizing effect of such a rule is appalling.

The bargaining relationship between NECA and the IBEW and the use of Letters of Assent such as those in the present case is long-standing and nationwide in scope. In an unbroken list of cases dating back over twenty years, the National Labor Relations Board (NLRB) and the federal courts of appeal have uniformly held that the signing of a standard IBEW Letter of Assent A (which either is identical or

similar to that in the present case) serves as a basis for inclusion of the assenting employer in the multiemployer bargaining unit represented by the local NECA chapter. *E.g., Northern Nevada Chapter, NECA*, 131 NLRB 550 (1961); *Central New Mexico Chapter, NECA*, 152 NLRB 1604 (1965); *Wayne Electric, Inc.*, 226 NLRB 409 (1976); *Nelson Electric*, 241 NLRB 545 (1979), *enfd.* 638 F.2d 965 (6th Cir. 1981); *Interstate Construction Company*, 227 NLRB 271 (1977); *Amado Electric, Inc.*, 238 NLRB 37 (1978); *A.S. Brooks Electric, Inc.*, 233 NLRB 889 (1977). In no case has any distinction been made between permissive and mandatory subjects of bargaining.

Inclusion in a multiemployer bargaining unit binds the assenting party to *all* of the lawful provisions of the collective bargaining agreement entered into between the assenting party's appointed bargaining agent, in this case, NECA and the IBEW (including amendments such as the NEIF provision). *Nelson Electric, supra; Brooks Electric, Inc., supra* (each of which involved the 1977 amendments in question here).

The decision below, although purporting to apply federal labor law, has ignored Hamilton's membership in the multiemployer unit represented by the FWCC arising from its execution of a Letter of Assent A. Instead the decision is premised upon a strained reading of the Letter of Assent in conjunction with the recognition clause of the assented-to collective bargaining agreement without reference to the realities of collective bargaining. This reading resulted in the Circuit Court's conclusion that the FWCC was authorized to act as Hamilton's bargaining agent solely as to mandatory subjects of bargaining.[4] This raises an issue of national importance requiring review by this Court.

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[4] The recognition clause of the agreement states that "the employer recognizes the union as the exclusive representative of all its employees . . . for the purpose of collective bargaining in respect to wages, hours of employment and conditions of employment". This is a boilerplate provision which mirrors the language of Section 9(a) of the Labor-Management Relations Act, 29 U.S.C. 159(a). Such provisions in the same or similar form appear in virtually all collective bargaining agreements. To interpret such a boilerplate provision as a limitation on the scope of the collective bargaining agreement is to completely ignore the realities of employer-union relations and the collective bargaining process. The distinction between mandatory and permissive subjects of bargaining is important only in determining whether an

(*footnote continues*)

The deleterious effect of the lower court's conclusion upon the stability of multiemployer bargaining is patent. In the give and take of the collective bargaining process, it is common for a party's bargaining "package" to contain interrelated proposals relating to both mandatory and permissive subjects of bargaining. The NLRB, the agency entrusted by Congress with primary responsibility for the formulation of federal labor policy,[5] has long recognized the interrelationship between permissive and mandatory subjects. *E.g., Nordstrom Inc.*, 229 NLRB 601 (1977).

The adverse effect on collective bargaining which the decision below creates is totally destructive of the bargaining process where a multiemployer unit is involved. Under the reasoning of the decision below, each individual member of the multiemployer unit would be bound by the contractual provisions negotiated by its representative and the union only to the extent that these provisions related to mandatory subjects of bargaining. Each individual member would then be free to pick and choose among those provisions which, in its opinion, related to permissive subjects. The chaotic results of such an approach to labor contracts are not difficult to imagine. A union, thinking it had negotiated a single contract with the multiemployer group, would find itself faced with as many different contracts as there are members of the multiemployer unit. In some of these contracts the union or the employer group may receive the permissive provision which it sought as a quid pro quo for concessions it made on mandatory provisions of bargaining. In others it might not.

The possibility of such "mini-withdrawals" from the individual provisions of the contract negotiated by the multiemployer representative poses a far more serious threat to the stability of multiemployer bargaining units than the individual withdrawals prohibited by this court in *Bonanno Linen, supra.* By permitting such an attack upon the stability of multiem-

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(footnote continued)

employer has a *duty* to bargain over a given topic under Section 8(a)(5) of the Act, 29 U.S.C. 158(a)(5). *NLRB v. Wooster Division of Borg-Warner*, 356 U.S. 342 (1958).

[5] *Bonanno Linen Service Co. v. NLRB, supra*

ployer bargaining units, the decision below conflicts with the principles set forth by this Court in *Buffalo Linen, supra, Bonanno Linen, supra,* and of the NLRB in *Retail Associates, supra.* The ubiquitous nature of multiemployer bargaining, combined with the serious threat to the stability of that mode of collective bargaining inherent in the decision below, underscores the compelling need for the resolution of that conflict.

II

The Decision Below Raises A Conflict Between the Eleventh And Sixth Circuits

In *Nelson Electric Co. v. NLRB,* 638 F.2d 965 (6th Cir. 1981), the Sixth Circuit Court of Appeals reviewed the decision of the NLRB in *Nelson Electric Co.,* 241 NLRB 545 (1979). In that case an employer who, in 1975 signed a Letter of Assent A identical in all material aspects to that signed by Hamilton in the present case, argued that it had only authorized the local NECA Chapter to act as its bargaining representative for matters contained in or pertaining to the then-current collective bargaining agreement which had expired in 1976. Because of this, the employer argued, it could not be held bound to the 1976-78 collective bargaining agreement entered into by the local NECA chapter. The Board rejected this argument holding that the Letter of Assent was not so limited and that by executing the letter the employer had become a member of the multiemployer bargaining unit represented by the local NECA chapter. The Board stated:

> . . . if that were not the intent of the Letter of Assent-A, that is to bind employers to an agreement by their granting authority to a multiemployer association to represent them in collective bargaining, then the entire letter is a meaningless piece of paper. *Nelson Electric, supra,* 241 NLRB at 550.

The Board then ordered the employer to come in to compliance with all of the terms of the 1976-78 agreement and specifically to "pay to the appropriate funds, the health and welfare, pension, apprentice training, and *other contributions*

required to be paid by the collective bargaining agreement. . ." (*Id.* at 546, emphasis supplied). The Board thus found that the signing of a Letter of Assent A constituted a *plenary* grant of bargaining authority to the local NECA chapter, thus binding the signing party to *all* provisions to which the local chapter has agreed. No distinction was made between mandatory and permissive subjects of bargaining.[6]

The Sixth Circuit Court of Appeals enforced this order of the NLRB in its entirety, noting:

> Nelson Electric's contention that the "Letter of Assent A" merely bound it to the terms of the collective bargaining agreement ignores the explicit language in the "Letter of Assent A" expressly designating the NECA as Nelson Electric's collective bargaining representative. [638 F.2d at 967.]

The holding of the Board and Sixth Circuit in *Nelson* is thus in direct conflict with that of the Eleventh Circuit below. Each case involved the interpretation of an identical IBEW Letter of Assent A. In *Nelson* that assent was held to be a plenary grant of authority which bound the signing party to *all* of the terms agreed to by the local NECA chapter without regard to their status as mandatory or permissive subjects of bargaining. In the opinion below, that identical Letter of Assent A was held to bind the signing party solely to those provisions negotiated by the local NECA chapter relating to mandatory subjects of bargaining.[7] Because of the widespread use of multiemployer bargaining and letters of assent, together with the threat to the stability of that method of bargaining inherent in the decision below, this Court should resolve this conflict.

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[6] See also *Sheet Metal Workers Union*, 144 NLRB 773 (1963); *Stein Printing Co.*, 204 NLRB 17 (1973) (dissenting opinion of Members Fanning and Jenkins).

[7] These cases arose in different procedural postures. *Nelson* was brought under § 8(a)(5) of the LMRA, 29 U.S.C. 158(a)(5), while the opinion below was brought under § 301 of the LMRA, 29 U.S.C. 185(a). However, the chief issue in each case was the same—to what extent a party signatory to an IBEW Letter of Assent A was bound by the collective bargaining agreement entered into by their respective bargaining agents.

III

The Interpretation Of The Ratification Issue In The Decision Below Raises A Conflict Between The Eleventh And Tenth Circuits

In *Arco Electric Co. v. NLRB*, 618 F.2d 698 (10th Cir. 1980), the Court was asked to review the decision of the NLRB in *Arco Electric Co.*, 237 NLRB 708 (1978). In *Arco* an employer who had signed an IBEW Letter of Assent B virtually identical to that executed by Hamilton in this case, claimed that he was not bound by the 1976-78 collective bargaining agreement. The Board held, *inter alia*, that the employer was in fact bound by that agreement due to the fact that he had abided by its terms and received the benefits flowing from it up until the point at which the increased contributions required by the 1977 amendments to that contract (including the NEIF) went into effect.[8] Such conduct, the Board reasoned, constituted ratification of the agreement thus estopping the employer from claiming he was not bound by the agreement as amended in 1977.

This finding of the Board's was enforced by the Tenth Circuit. In considering the employer's argument that he could not be held bound by the 1977 amendments because he had not approved them, the Court stated:

> Arco says that the 1977 contract amendments, which increased employers' contributions to Union funds, were invalid because Arco did not approve them. The contract permits amendments with the consent of the parties, who were NECA and the Union. Nothing in the contract requires notice of an amendment to Arco or any other employer. [618 F.2d at 700.]

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[8] The Board also held that the language of the Letter of Assent B was sufficient to bind the Employer to the collective bargaining agreement including the 1977 amendments (no mandatory/permissive distinction was drawn). This finding was rejected by the Tenth Circuit because the Letter of Assent B had expired prior to the execution of the 1976-78 agreement. There is no question in the present case that the Letters of Assent B executed by Hamilton had *not* expired. The reasoning of the opinion below is thus in conflict with the reasoning of the Board in *Arco*.

The decision below held that conduct on the part of Hamilton that was identical in all material aspects to that of the employer in *Arco* did *not* constitute ratification of those same 1977 amendments. The two decisions thus stand in irreconcilable conflict; a conflict which should be resolved by this Court.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Eleventh Circuit.

Respectfully submitted,

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No. 80-5723

United States Court of Appeals

ELEVENTH CIRCUIT

Jan. 22, 1982

DEAN J. MCDONALD, as Collection Agent for the Trustees of the National Electrical Industry Fund,

Plaintiff-Appellee,

v.

HAMILTON ELECTRIC, INC. OF FLORIDA,

Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida.

Before MORGAN, HILL and KRAVITCH, Circuit Judges.

KRAVITCH, Circuit Judge:

This appeal arises from a decision by the United States District Court for the Middle District of Florida, holding the appellant liable for failing to comply with a provision of a collective bargaining agreement requiring the contribution of 1% of an employer's gross payroll to the National Electrical Industry Fund (NEIF), an industry promotion fund.[1] Appellant argues that it was not bound by the NEIF provision because it neither authorized the Florida West Coast Chapter of the National Electrical Contractors' Association (FWCC,

[1] Appellee, Dean J. McDonald, as Collection Agent for the Trustees of the National Electrical Industry Fund, filed suit against appellant, Hamilton Electric, Inc. of Florida, in federal district court to compel contribution to the NEIF under §301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. §185(a).

NECA) to negotiate such a provision on its behalf nor ratified the NEIF. The district court held otherwise, finding that by virtue of letters of assent executed by the appellant, the FWCC, NECA was authorized to bind the appellant to the NEIF provision and that by accepting the benefits flowing from other provisions of the collective bargaining agreement and by signing the letters of assent during the term of the agreement, appellant ratified the NEIF provision. We disagree with the conclusions of the district court and accordingly reverse.

Appellant, Hamilton Electric, Inc., is a Florida corporation that engages in electrical contracting. At all times relevant to this case, appellant hired labor from local chapters of the International Brotherhood of Electrical Workers (IBEW) but was not an express party to a collective bargaining agreement with the IBEW locals. Instead, appellant executed letters of assent in which it agreed to adhere to the terms and conditions of the current collective bargaining agreements between the local unions and the FWCC, NECA and authorized the FWCC, NECA to negotiate matters on its behalf pertaining to or amending the agreements. Appellant signed a Letter of Assent A for Local Unions # 915 Inside and # 915 Residential on May 6, 1974, a Letter of Assent B for Local Union # 941 Inside on November 1, 1976, and a letter of assent, which neither party was able to discover prior to trial, for Local Union # 308 Inside.[2] None of the collective bargaining agreements to which the appellant assented contained the NEIF provision.

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[2] Letters of assent are routinely submitted by IBEW locals to all contractors requesting union labor. Generally, the execution of a letter of assent is a prerequisite to obtaining such labor. The letters are of two varieties. Letter of Assent A, the short form agreement generally submitted to contractors, has no specific termination date. It states:

> In signing this letter of assent, the undersigned firm does hereby authorize _____ as its collective bargaining representative for all matters contained in or pertaining to the current approved ____ labor agreement between the _____ and Local Union _____, IBEW. This authorization, in compliance with the current approved labor agreement, shall become effective on the ____ day of _____. It shall remain in effect until terminated by the undersigned employer giving

(footnote continues)

Subsequent to the execution of these letters of assent, NECA and IBEW negotiated the NEIF provision and several other measures, all of which were adopted by the Board of Governors of NECA in October, 1976 and ultimately were incorporated into all existing collective bargaining agreements, effective July 1, 1977.

On March 7, 1977, appellant received copies of the modified collective bargaining agreements and immediately sent letters to the business managers of all the IBEW locals from which appellant hired its employees, stating that appellant was not a member of NECA, had no intention of becoming a member, and would not contribute to the NEIF. The letters also stated that appellant would comply with all other provisions of the collective bargaining agreements. In April, 1977, appellant executed a letter of assent which it revised to expressly repudiate the NEIF provision and FWCC's authority

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(*footnote continued*)

written notice to the _____ and to the Local Union at least one hundred fifty (150) days prior to the then current anniversary date of the aforementioned approved labor agreement.

Upon request, the union will provide a contractor with a Letter of Assent B, which calls for a specific termination date. A Letter of Assent B provides:

This is to certify that the undersigned employer has examined a copy of the current approved _____ labor agreement between _____ and Local Union _____, IBEW.

The undersigned employer hereby agrees to comply with all of the terms and conditions of employment contained in the above mentioned agreement and all approved amendments thereto. It is understood that the signing of this letter of assent shall be as binding on the undersigned employer as though he had signed the above referred to agreement, including any approved amendments thereto.

This letter of assent shall become effective for the undersigned employer on the _____ day of _____ and shall remain in effect until the _____ day of _____.

If the undersigned employer does NOT intend to renew this assent, he shall so notify the Local Union in writing at least sixty (60) days prior to the termination date.

to act as its bargaining representative.[3] At no time did the appellant pay into the National Electrical Industry Fund. It did, however, continue to use labor from the IBEW local unions and adhere to all other terms and conditions of the collective bargaining agreements, including those provisions adopted at the same time as the NEIF. At trial, the district court held appellant liable for 1% of its gross payroll from July 1, 1977 until the appellant's contracts with the local unions had terminated.[4] This appeal followed.

A. Authorization

The first issue before us is whether the district court erred in holding that the appellant authorized the FWCC, NECA to

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[3] The only letter of assent appellant executed after the adoption of the NEIF provision was a Letter of Assent B for Local Union 308, IBEW, which states:

> This is to certify that the undersigned employer has examined a copy of the current approved *Residential Wireman's* labor agreement between *Hamilton Electric Inc. of Florida* and Local Union 308 IBEW.
>
> The undersigned employer hereby agrees to comply with all of the terms and conditions of employment contained in the above mentioned agreement and all approved amendments thereto. It is understood that the signing of this letter of assent shall be as binding on the undersigned employer as though he had signed the above referred to agreement, including any approved amendments thereto. "*Delete any and all reference to National Electrical Contractors Assoc. (NECA) and Article VIII (Industry Fund) from the labor agreement" see further.*
>
> This letter of assent shall become effective for the undersigned employer on the *14* day of *April, 1977* and shall remain in effect until the *31* day of *August, 1978* (termination date).
>
> If the undersigned employer does NOT intend to renew this assent, he shall so notify the Local Union in writing at least sixty (60) days prior to the termination date. "*Further—Hamilton Electric Inc. of Florida is not nor do we intend to become members of National Electrical Contractors Association (NECA) nor do we intend to pay 1% of our gross labor payroll (Article VIII) to NECA.*

The business manager of the Local Union 308, IBEW approved this letter of assent.

[4] The verdict against appellant totalled $3,716.34.

bind it to the NEIF provision by executing the letters of assent. In resolving this question, "we apply federal law and the precepts of national labor policy in the labor field, not state law relating to principal and agent in commercial transactions." *Teamsters Local Unions v. Braswell Motor Freight Lines, Inc.*, 392 F.2d 1, 9, *rehearing denied in part and granted in part*, 395 F.2d 655 (5th Cir. 1968).[5] *See e.g., Textile Workers Union of America v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 923, 1 L.Ed.2d 972 (1957). To determine the scope of authority given the FWCC, NECA, we must construe certain clauses of the letters of assent and collective bargaining agreements which the letters of assent incorporate by reference. "Of course, these clauses cannot be evaluated out of context or unmindful of the contract and industrial setting as a whole. However, unless there is patent ambiguity, the plain meaning of the words should generally be followed." *Sam Kane Packing Co., et al. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO*, 477 F.2d 1128, 1131 (5th Cir. 1973).

A careful reading of the letters of assent and the collective bargaining agreements to which the letters refer reveals that the NEIF provision falls beyond the scope of appellant's assent. The letters of assent are of two types. *See* note 2 *supra*. Letter of Assent A provides that "the undersigned firm does hereby authorize [FWCC] as its collective bargaining representative for all matters contained in or pertaining to the current approved ____ labor agreement between the [FWCC, N.E.C.A.] and Local Union ____, IBEW." Letter of Assent B states that "the undersigned employer hereby agrees to comply with all of the terms and conditions of employment contained in the above mentioned agreement and all amendments thereto." By executing these letters of assent, appellant agreed to be bound by any matter contained in the extant collective bargaining agreements as well as any changes negotiated by the FWCC, NECA pertaining to or amending the agreements. None of the collective bargaining agreements to which appellant expressly assented contained an NEIF provision. Thus,

[5] The Eleventh Circuit in *Bonner v. Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc) adopted as precedent the decisions of the former Fifth Circuit.

only if the NEIF provision *pertained to* or *amended* the assented-to collective bargaining agreements can we conclude that the appellant authorized the appellee to bind it to the NEIF provision.[6] To determine this, we must examine the scope of the assented-to collective bargaining agreements.

Article II of the collective bargaining agreements defines employer-union rights and states that "the employer recognizes the union as the exclusive representative of all its employees . . . for the purpose of collective bargaining in respect to wages, hours of employment and conditions of employment." Thus, the scope of the collective bargaining agreements was generally limited to mandatory subjects of bargaining. National Labor Relations Act § 8(d), 29 U.S.C. § 158(d). *See, e.g., NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 78 S.Ct. 718, 2 L.Ed.2d 823 (1958); *Axelson, Inc., Subsidiary of U.S.A. v. N.L.R.B.*, 599 F.2d 91 (5th Cir. 1979). That is not to say that the FWCC, NECA and local unions could not have adopted a permissive subject of bargaining and that the appellant could not have expressly assented to or ratified such a provision. In the absence of subsequent assent or ratification, however, the appellant could not be bound by the adoption of a permissive subject of bargaining not provided for by the assented-to labor agreements.

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[6] The appellee asserts that the scope of the authority given the FWCC, NECA by the letters of assent was plenary and not limited by the specific reference in the letters of assent to the extant collective bargaining agreements. It is a well-established rule, however, that a reference by the contracting parties to an extraneous writing makes the writing part of their agreement for the purposes specified. *Guerini Stone Co. v. P. J. Carlin Construction Co.*, 240 U.S. 264, 277, 36 S.Ct. 300, 306, 60 L.Ed. 636 (1916); *Lodges 743 and 1746, etc. v. United Aircraft*, 534 F.2d 422, 441 (2d Cir. 1975). See *Seymour v. Coughlin Co.*, 609 F.2d 346 (9th Cir. 1979). The letters of assent executed by appellant limit the FWCC, NECA's authority as appellant's bargaining representative to those matters contained in, pertaining to, or amending the "current" labor agreement. Therefore, we reject appellee's contention and examine the collective bargaining agreements in order to ascertain the authority possessed by the FWCC, NECA by virtue of the letters of assent.

This court has never specifically addressed whether an "industry promotion fund," such as the NEIF, is a mandatory or a permissive subject of bargaining. Other courts and the NLRB, however, have consistently held that industry promotion funds do not qualify as mandatory subjects of bargaining.[7] *See, e.g., N.L.R.B. v. Sheet Metal Workers International Association, Local Union No. 38,* 575 F.2d 394 (2d Cir. 1978); *N.L.R.B. v. Local 264, Laborers' International Union of North America,* 529 F.2d 778 (8th Cir. 1976); *N.L.R.B. v. Detroit Resilient Floor Decorators Local Union No. 2265,* 317 F.2d 269 (6th Cir. 1963); *Local 80, Sheet Metal Workers,* 161 N.L.R.B. 229 (1966). We Agree.

Section 8(d) of the National Labor Relations Act defines mandatory subjects of bargaining as those issues "with respect to wages, hours, and other terms and conditions of employment." Although § 8(d) "does not immutably fix a list of subjects for mandatory bargaining," the list is limited, in general terms, to "issues that settle an aspect of the relationship between the employer and employees" and that have more than a speculative and insubstantial impact upon that relationship. *Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co.,* 404 U.S. 157, 178, 92 S.Ct. 383, 397, 30 L.Ed.2d 341 (1971); *Axelson, Inc., Subsidiary of U.S.A. v. N.L.R.B., supra* at 93. The Fifth Circuit has similarly characterized mandatory subjects of bargaining as issues that "benefit all of the members of the collective bargaining unit through encouraging the collective bargaining process and vitally affecting the relationship between the employer and employees." *Id.* at 94. Industry promotion funds, such as the NEIF, do not vitally affect the employer-employee relationship. *See Wagor v. Cal Kovens Construction Corp.,* 382 F.2d 813, 815 (5th Cir. 1967). Instead, the NEIF is primarily concerned with the relationship between the industry and the public and with the funding of FWCC and NECA activities.[8] In our judgment, the NEIF provision is not a

[7] The appellee at oral argument conceded that the NEIF provision was not a mandatory subject of bargaining. Nevertheless, we think it important to fully discuss the issue because this court has not previously addressed it.

[8] Money paid by members of FWCC, NECA to the NEIF serves as their membership dues.

mandatory subject of bargaining and therefore does not pertain to or amend a term contained in the assented to collective bargaining agreement. Thus, appellant did not authorize the FWCC, NECA to bind it to the NEIF provision by executing letters of assent prior to the adoption of that provision.

B. Ratification

The district court also held as a matter of law that the appellant ratified the NEIF provision. A principal can ratify the unauthorized act of an agent purportedly done on behalf of the principal either expressly or by implication through conduct that is inconsistent with an intention to repudiate the unauthorized act. *See* Restatement (Second) of Agency §§ 82, 83 (1957); *Shearson Hayden Stone, Inc. v. Leach*, 583 F.2d 367, 369 (7th Cir. 1978); *Weber v. Towner County*, 565 F.2d 1001, 1008 (8th Cir. 1977); *Wagor v. Cal Kovens Construction Corp., supra*. The district court found that appellant ratified the NEIF provision by signing letters of assent during the terms of the collective bargaining agreements and by voluntarily seeking and accepting the benefits flowing from the agreements. But, as we held above, the letters of assent did not authorize the FWCC, NECA to bind the appellant to the NEIF provision and, therefore, cannot serve as a basis for finding the ratification of that provision. Nor can appellant be held to have ratified the unauthorized NEIF provision by continuing to adhere to and enjoy the benefits of the terms of the collective bargaining agreements to which it was contractually bound as a result of the previously executed letters of assent. Thus, we find the district court's rationale for holding that appellant ratified the NEIF provision erroneous.

On the contrary, the district court's findings of fact indicate that the appellant did not ratify the NEIF provision. On March 7, 1977, appellant notified the business managers of the IBEW locals that it would not comply with the NEIF provision. In April of 1977, appellant executed a letter of assent that explicitly rejected the NEIF provisions, as well as NECA's authority to act as appellant's bargaining representative. Moreover, appellant never contributed to the industry fund. Thus,

we conclude that the appellant not only did not ratify the NEIF provision, it expressly repudiated the measure. *See Wagor v. Cal Kovens Construction Corp., supra.*[9]

For the above reasons, we hold that the district court erred in finding that the appellant authorized the appellee to bind it to the NEIF and that appellant subsequently ratified the provision. Accordingly, we REVERSE.

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[9] In *Wagor v. Cal Kovens Construction Corp., supra*, the Fifth Circuit addressed the issue of ratification of an industry promotion fund by an employer, who was not a member of an employers' association. Unlike the appellant, however, the employer in that case never designated the employers' association as its bargaining representative. This difference is not significant, however, because as we have already concluded, the appellant did not authorize the appellee to negotiate the NEIF provision on its behalf. The contract negotiated by the employer in *Cal Kovens Construction Corp.*, though never reduced to writing, permitted the employer to use union labor so long as it paid the laborers the same wages and fringe benefits provided for by the master collective bargaining agreement. The Fifth Circuit rejected the appellant's contention that the employer should be held to have adopted the contract negotiated by the associations and to have breached its obligation to contribute to the industry fund on the ground that "[a]t no time did [appellee] deliberately enter into relations with the Carpenters' Union which were only consistent with the adoption of such contract." *Id.* at 815. The basis for the court's conclusion was threefold: 1) the employer's separate agreement with the union contained no reference to the industry fund; 2) neither the union nor its members had any interest in the fund; and 3) the employer never contributed to the fund. *Id.*

The same factors that lead the court in *Cal Kovens Construction Corp.* to conclude that the employer had not ratified the industry fund provision are present in this case. First, as we previously stated, the prior collective bargaining agreements did not contain the NEIF provision, and appellant never authorized the appellee to negotiate such a provision. Second, the NEIF does not vitally affect the interest of the union or its members and is not being vindicated for the benefit of either. And, finally, the appellant never contributed to the fund. In addition, the appellant in this case expressly repudiated the NEIF provision in the letters of March 9, 1977 that it sent to the business managers of the IBEW local unions and in the letter of assent that it executed in April, 1977. Thus, our holding that appellant did not ratify the NEIF provision is consistent with *Wagor v. Cal Kovens Construction Corp., supra.*

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF FLORIDA—TAMPA DIV.

Civil Action File No. 78-564-Civ. T-H

DEAN J. McDONALD, as Collection Agent for the Trustees of the NATIONAL ELECTRICAL INDUSTRY FUND,

vs.

HAMILTON ELECTRIC, INC., OF FLORIDA,

JUDGMENT

This action came on for trial before the Court, Honorable WM. TERRELL HODGES, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the Plaintiff DEAN J. McDONALD, as Collection Agent for the Trustees of the NATIONAL ELECTRICAL INDUSTRY FUND, recover of the Defendant HAMILTON ELECTRIC, INC., OF FLORIDA, the sum of $3,716.34 with interest thereon at the rate as provided by law, and his costs of action.

Dated at Tampa, Florida, this 8th day of August, 1980.

WESLEY R. THIES
Clerk of Court

By JOHN F. GAY
Deputy Clerk

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 78-564 Civ-T-H

DEAN J. MCDONALD, etc.,
Plaintiff,

vs.

HAMILTON ELECTRIC, INC., OF FLORIDA,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was commenced on June 20, 1978 by the Plaintiff, Dean J. McDonald, Collection Agent for the Trustees of the National Electrical Industry Fund to enforce provisions of collective bargaining agreements entered into between the Defendant, Hamilton Electric, Inc. of Florida (Hamilton), and certain Local Unions of the International Brotherhood of Electrical Workers (IBEW). Jurisdiction is based upon the provisions of 29 U.S.C. § 185.

On July 1, 1977 the collective bargaining agreements then in force between the Locals and participating employers were amended to provide, *inter alia,* for the establishment of the National Electrical Industry Fund (NEIF). The amendments required payment into NEIF of 1% of the gross labor payroll of all union employers who assented to the collective bargaining agreements. Hamilton denies that it is bound by the amendments mandating the 1% contribution to NEIF.

The central issue is whether the Plaintiff, in his capacity as an employer representative, had the authority to bind the Defendant to the amendments negotiated by the Plaintiff and the Locals to the collective bargaining agreements. The authority of the Plaintiff, if any, is derived from short-form agreements called "letters of assent" which the employer (in this case the Defendant) is required by the Union to sign whenever employees are furnished to an employer through the Union hiring hall.

The case was tried before the Court on April 22, 1980 without a jury. At the conclusion of the evidence counsel waived oral argument and requested the opportunity to submit simultaneous proposed findings of fact and conclusions of law.

Based upon the evidence adduced at trial, an examination of the findings and conclusions proposed by the parties and review of the entire file, the Court makes the following findings of fact and conclusions of law pursuant to Rule 52, Fed. R. Civ. P.:

FINDINGS OF FACT

1. Plaintiff McDonald was appointed the collection agent for the NEIF on July 1, 1977. He is also the Secretary and Manager of the Florida West Coast Chapter of the National Electrical Contractors Association (NECA) and has been since 1969. In this capacity Plaintiff has been the employer representative in all negotiations involving collective bargaining agreements with IBEW Local Unions #915 and IBEW Local Union #941 since 1969, and IBEW Local Union #308 since 1975.

2. Defendant Hamilton is and has been at all times material to this cause a corporation duly organized under the laws of the State of Florida. The Defendant maintains its principal place of business in Pinellas County, Florida where it is engaged as an electrical contractor in the building and construction industry. At all times relevant to this complaint Defendant has utilized union labor from IBEW Local Unions,

and is an employer within the meaning of the applicable collective bargaining agreements.

3. The Florida West Coast Chapter of the National Electrical Contractors Association (FWCCNECA) is a chartered local subdivision of NECA having received its charter in 1957. Its constitution and bylaws are modeled after those of NECA. Its geographic jurisdiction is determined by the jurisdiction of the local unions of IBEW with which it negotiates. It has negotiated collective bargaining agreements for assenting member and non-member contractors with IBEW Local Unions #915, and #941 since 1957 and for Local Union #308 since February 7, 1975. In 1976 it specifically assumed authority to negotiate in behalf of the contractors who, until that time, were represented by the Pinellas County Electrical Contractors Association which was disbanded in 1975.

4. Short-form agreements called Letters of Assent are routinely submitted by IBEW locals to all contractors requesting union labor. The Letters of Assent grant authority to the appropriate local chapter of NECA to negotiate collective bargaining agreements with the designated local union of IBEW. The contractors' execution of a Letter of Assent is a prerequisite to the utilization of union labor. The format for the Letters of Assent is reflected in printed forms supplied by IBEW. There are two varieties: Letter of Assent A, which has no specific termination date, and Letter of Assent B, which calls for a specific termination date. Letter of Assent A is the form normally submitted to the contractor seeking union labor. Letter of Assent B is used only when requested by the contractor.

5. Defendant Hamilton was familiar with the Letter of Assent requirement and signed a Letter of Assent A for Local Unions #915 Inside and Residential on May 6, 1974 and a Letter of Assent B for Local Union #941 Inside on November 1, 1976 (effective through October 31, 1977). In addition, a Letter of Assent was most likely in effect for Local Union #308 Inside and binding upon the Defendant as of March 7, 1977, but neither Plaintiff nor Defendant were able to discover that document prior to trial.

6. It is possible that more than one collective bargaining agreement could be negotiated under the authority of a single Letter of Assent depending upon the term of the Letter of Assent. There was no evidence adduced at trial to support Defendant's contention that collective bargaining agreements were not effective until approved or ratified by a new Letter of Assent. It is undisputed that no revocation or supplement to FWCCNECA's authority to bargain as set out in Letters of Assent A or B was attempted by the Defendant until March 7, 1977.

7. Plaintiff seeks to enforce four collective bargaining agreements against Hamilton. The first is with Local Union #915 Inside, effective December 1, 1976 through November 30, 1977; the second with a Local Union #915 Residential, effective March 1, 1977 through February 28, 1978; the third with Local Union #941 Inside, effective March 1, 1976 through February 28, 1978; and the fourth with Local Union #308 Inside, effective December 1, 1976 through November 30, 1977.

8. Each contract was negotiated and entered into during the term of a valid Letter of Assent executed by Hamilton. In fact, these contracts are but a part of a pattern and course of dealing among IBEW locals, local NECA chapters and union contractors or employers. Defendant Hamilton was aware of and voluntarily participated in this pattern of dealings between the Local Unions and assenting employers.

9. The disputed provision requiring contractors to pay 1% of their gross labor payroll into NEIF was one of several negotiated between NECA and IBEW and submitted for consideration by NECA at its National Board of Governor's convention held in October, 1976. FWCCNECA sent a delegate to that convention. The negotiated proposal was adopted by a vote of the Governors and ultimately incorporated into all existing collective bargaining agreements effective July 1, 1977, including the collective bargaining agreements at issue in this cause.

10. The first tangible evidence of Defendant Hamilton's objection to the 1% clause is Defendant's letter of March 7, 1977 sent to all business managers of local unions from which

Hamilton was hiring its employees. That letter expresses an unwillingness to contribute to NEIF but acknowledges that Hamilton intended to continue operating under all other provisions of the existing contracts. The record reflects that union labor was utilized extensively by Hamilton subsequent to July 1, 1977 for the duration of Hamilton's contracts with the Local Unions. Hamilton incurred gross payrolls as follows:

A. #915 Inside—July, $14,556.64; August, $16,252.75; September, $21,469.12; October, $20,345.17; November, $24,033.55. (all 1977).

B. #915 Residential—(1977) July, $4,893.92; August, $2,903.90; September, $2,409.50; October, $2,775.50; November, $3,318.40; December $4,676.00; (1978) January, $4,460.80; February, $7,293.00.

C. #941 Inside—(1977) July, $9,803.44; August, $12,491.51; September, $14,510.07; October, $11,119.89; November, $6,924.46; December, $10,208.86; (1978) January, $8,024.81; February, $8,546.54.

D. #308 Inside—July, $22,944.30; August, $28,440.41; September, $40,325.09; October, $34,858.81; November, $33,719.89. (all 1977).

11. Defendant's alleged breach of its contractual obligation was referred to the Labor-Management Committee established by local collective bargaining agreements to resolve such disputes. Defendant did not appear before the bipartite panel. The Committee determined, however, that Defendant had violated the terms of the collective bargaining agreements to which it had assented.

CONCLUSIONS OF LAW

1. This Court has original jurisdiction of this cause under the provisions of 29 USC §185 and the case was properly removed pursuant to 28 USC §1441.

2. By virtue of the Letters of Assent signed by the Defendant, Plaintiff had the authority to bind the Defendant to the amendments negotiated by the Plaintiff.

3. Defendant Hamilton has attempted to avoid ratification of the disputed 1% provision by refusing to make any payments into NEIF and by revising subsequent Letters of Assent to voice objections to its obligation to pay into the fund. Regardless, by voluntarily seeking and accepting the benefits flowing from the collective bargaining agreements and by signing letters of assent during the terms of the agreements themselves, Defendant has ratified the collective bargaining agreements in their entirety and is consequently bound by the disputed 1% provision.

3. The following gross labor payroll amounts were incurred by Defendant Hamilton during the applicable time periods:

Union	Amount	1% of Payroll
#915 Inside	$ 96,657.23	$ 966.57
#915 Residential	$ 32,731.02	$ 327.31
#941 Inside	$ 81,956.89	$ 819.56
#308 Inside	$160,288.50	$1,602.89
Total		$3,716.34

Accordingly, it is ORDERED and ADJUDGED:

1. The Clerk is directed to enter judgment in favor of the Plaintiff, and against the Defendant, in the amount of $3,716.34, plus interest according to law, for all of which let execution issue.

2. Counsel for the Plaintiff shall have fifteen (15) days from the date hereof to submit a legal memorandum with attached affidavits in support of its request for attorney's fees. Counsel for the Defendant shall have fifteen (15) days from the date on which Plaintiff's memorandum is filed within which to respond.

DONE and ORDERED at Tampa, Florida, this 8th day of August, 1980.

WM. TERRELL HODGES

United States District Judge

IN THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 80-5723

DEAN J. MCDONALD, as Collection
Agent for the Trustees of the
NATIONAL ELECTRICAL INDUSTRY FUND,
Plaintiff-Appellee,

versus

HAMILTON ELECTRIC, INC., OF FLORIDA,
Defendant-Appellant.

Appeal from the United States District Court for the Middle District of Florida

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ON PETITION FOR REHEARING

(March 3, 1982)

Before MORGAN, HILL AND KRAVITCH, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

PHYLLIS KRAVITCH
United States Circuit Judge

EXHIBIT A

AGREEMENT

between

FLORIDA WEST COAST CHAPTER

N.E.C.A.

and

LOCAL 915

INTERNATIONAL

BROTHERHOOD

of

ELECTRICAL WORKERS

TAMPA, FLORIDA

Effective

DECEMBER 1, 1976

Expires

NOVEMBER 30, 1977

(This is a copy amended to reflect the provisions of the IBEW-NECA Agreement, (attached hereto) all of which become effective as of July 1, 1977)

Agreement by and between the Florida West Coast Chapter, NECA and Local Union #915, IBEW.

It shall apply to *all firms* who sign a *letter of assent* to be bound by this Agreement.

As used hereinafter in this Agreement, the term Chapter shall mean the Florida West Coast Chapter, NECA, and the term "Union" shall mean Local Union 915, IBEW.

The term "Employer" shall mean an individual firm who has been recognized by an assent to this Agreement.

Basic Principles

The Employer and the Union have a common and sympathetic interest in the Electrical Industry. Therefore, a working system and harmonious relations are necessary to improve the relationship between the Employer, the Union, and the Public. Progress in industry demands a mutuality of confidence between the Employer and the Union. All will benefit by continuous peace and by adjusting any differences by rational, common sense methods. Now, therefore, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

Effective date—Changes—Grievances—Disputes

SEC. 1 This Agreement shall take effect December 1, 1976 and shall remain in effect until November 30, 1977 unless otherwise specifically provided for herein. It shall continue in effect from year to year thereafter, from December 1 through November 30 of each year, unless changed or terminated in the way later provided herein.

SEC. 2(a) Either party desiring to change or terminate this agreement must notify the other in writing at least 90 days prior to the anniversary date.

(b) Whenever notice is given for changes, the nature of the changes desired must be specified in the notice.

(c) The existing provisions of the agreement shall remain in full force and effect until a conclusion is reached in the matter of proposed changes.

(d) Unresolved issues in negotiations that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations, may be submitted jointly or unilaterally by the parties to this agreement to the Council for adjudication prior to the anniversary of the agreement.

(e) When a case has been submitted to the Council, it shall be the responsibility of the negotiating committee to continue to meet weekly in an effort to reach settlement on the local level prior to the meeting of the Council.

(f) Notice by either party of a desire to terminate this agreement shall be handled in the same manner as a proposed change.

SEC. 3 This agreement shall be subject to change or supplement at any time by mutual consent of the parties hereto. Any such change or supplement agreed upon shall be reduced to writing, signed by the parties hereto, and submitted to the International Office of the IBEW and the National Office of NECA for approval, the same as this agreement.

SEC. 4 There shall be no stoppage of work either by strike or lockout because of any proposed changes in this agreement or dispute over matters relating to this Agreement. All such matters must be handled as stated herein.

SEC. 5 There shall be a Labor-Management Committee of three representing the Union and three representing the Employer. It shall meet regularly at such stated times as it may decide. However, it shall meet within 48 hours when notice is given by either party. It shall select its own Chairman and Secretary.

SEC. 6 All grievances or questions in dispute shall be adjusted by the duly authorized representatives of each of the parties to this agreement. In the event that these two are unable to adjust any matter within 48 hours, they shall refer the same to the Labor-Management Committee.

SEC. 7 All matters coming before the Labor-Management Committee shall be decided by majority vote. Four members of the Committee, two from each of the parties hereto, shall be a quorum for the transaction of business, but each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting.

SEC. 8 Should the Labor-Management Committee fail to agree or to adjust any matter, such shall then be referred to the Council on Industrial Relations for the Electrical Contracting Industry for adjudication. The Council's decision shall be final and binding on both parties hereto.

ARTICLE II

Employer Rights—Union Rights

SEC. 1 Members of the Union, except those meeting the requirement of "Employer" as defined herein, shall not contract for any electrical work. Local Union members taking out licenses as contractors shall not be allowed to work back and forth as contractors or journeymen wiremen, as the occasion arises.

SEC. 2 The Union agrees that if during the life of this agreement it grants to any other Employer in the Electrical Contracting Industry, any better terms or conditions than those set forth in this agreement, such better terms or conditions shall be made available to the Employer under this agreement and the Union shall immediately notify the Employer of any such concessions.

SEC. 3 The employer recognizes the union as the exclusive representative of all its employees performing work within the jurisdiction of the union for the purpose of collective bargaining in respect to wages, hours of employment and conditions of employment. Such representation shall not be altered by contracts with other labor organizations. The jurisdiction of work and the territorial jurisdiction of such work shall be as determined by the International President of the IBEW. Any employer performing work outside the territorial

jurisdiction of Local Union 915, IBEW, shall perform such work in accordance with the agreement of the Local Union of the IBEW having jurisdiction of such work.

SEC. 4 Certain qualifications, knowledge, experience, and financial responsibility are required of everyone desiring to be an Employer in the Electrical Industry. Therefore, an Employer who contracts for electrical work is a person, firm or corporation having these qualifications and maintaining a permanent place of business and suitable financial status to meet payroll requirements, and employing not less than one journeyman wireman regularly.

(a) To provide that an individual desiring to enter the electrical contracting business on a small scale, it is agreed by the parties to this agreement that an individual employer shall be permitted to work with the tools for a period not to exceed two years. The individual employer will be allowed to work with the tools at any time during this two year period providing the employees do not exceed four in number, including himself. When the employer works with the tools, he shall comply fully with all provisions of this agreement.

SEC. 5(a) For all employees covered by this agreement, the Employer shall carry Workmen's Compensation Insurance with a company authorized to do business in the State of Florida, Social Security, and such other protective insurance as may be required by the laws of the State of Florida, and shall also make contributions for all employees to the Florida Unemployment Compensation Commission. The Employer shall furnish satisfactory proof to the Union, upon the Union's demand, that all the required provisions of this Section are being complied with.

(b) It is agreed that in accord with the National Employees Benefit Agreement entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended, that unless authorized otherwise by the National Employees Benefit Board, the individual employer will forward monthly to the designated Local Employees Benefit Board an amount equal to 1% of his gross monthly labor payroll, which

he is obligated to pay to the employees in this bargaining unit, and a completed payroll report prescribed by the National Board. The payment shall be made by check or draft and shall constitute a debt due and owing to the National Board on the last day of each calendar month, which may be recovered by suit initiated by the National Board or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate Local Board not later than fifteen (15) calendar days following the end of each calendar month.

Individual employers who fail to remit as provided above shall be additionally subject to having this agreement terminated upon seventy-two (72) hours notice in writing being served by the Union, provided the individual employer fails to show satisfactory proof that the required payments have been paid to the Local Employees Benefit Board.

The failure of an individual employer to comply with the applicable provisions of the National Employees Benefit Agreement shall also constitute a breach of this labor agreement.

(c) When an injury occurs on the job, it shall be the duty of the Foreman or man in charge to immediately notify the doctor or the hospital to which the patient is being taken of the insurance or coverage to facilitate immediate admittance.

The name and address of the Employer's Industrial Insurance Carrier shall be furnished to the persons in charge of the job at the beginning of each job, and it shall be the duty of these employees to apprise themselves of this information.

If any employee becomes sick or is injured to the extent that removal from the job or shop is necessary to provide medical attention, the employer shall provide transportation to and from the doctor's office or hospital. The employee shall be paid for all lost time. If, at the discretion of the doctor, the employee is unable to return to work, he shall not lose any time for that day, not to exceed 8 hours straight time. (It is the intent of this section to provide that the employer shall pay the employee for time away from the job at the regular straight time rate of pay.)

The employer shall furnish and immediately fill out an injury report form on each employee injury that occurs. The report form shall state the date, time, and all other pertinent information of the accident. It shall be the duty of the person in charge of the job to see that the form is promptly furnished to the contractor's office. Copies of the report shall be mailed to the Union. Such shall be concluded within ten (10) days after the injury report has been received by contractor's office.

SEC. 6 The Union reserves the right to discipline its members for violation of its laws, rules and agreements.

SEC. 7 This agreement does not deny the right of the Union or its representatives to render assistance to other labor organizations by removal of its members from jobs when necessary and when the Union or its proper representative decides to do so; but no removal shall take place until notice is first given to the Employer involved.

SEC. 8 When such a removal takes place, the Union or its representative shall direct the workman on such job to carefully put away all tools, materials, equipment, or any other property of the Employer, in a safe manner. The Union will be financially responsible for any loss to the Employer for neglect in carrying out this provision, but only when a safe place is provided for these by the Employer.

SEC. 9 No Employer or member of a firm (Employer) shall be permitted to work with the tools on work covered by the terms of this agreement—except in case of any emergency or minor repairs, and then only when a journeyman wireman is not available. Whenever it is necessary for an Employer or member of a firm (Employer) to perform any work, he shall notify the Steward or Business Manager of the Union of the location and nature of the work.

SEC. 10 The Local Union is a part of the International Brotherhood of Electrical Workers, and any violation or annulment by an individual employer of the approved agreement of this or any other Local Union of the IBEW, other than violations of Paragraph 2 of this section, will be sufficient cause for the cancellation of his agreement by the Local Union, after

a finding has been made by the International President of the Union that such a violation or annulment has occurred.

The subletting, assigning or transfer by an individual employer of any work in connection with electrical work to any person, firm or corporation not recognizing the IBEW or one of its local unions as the collective bargaining representative of his employees on any electrical work in the jurisdiction of this or any other local union to be performed at the site of the construction, alteration, painting, or repair of a building, structure or other work, will be deemed a material breach of this agreement.

All charges of violations of Paragraph 2 of this section shall be considered as a dispute and shall be processed in accordance with the provisions of this agreement covering the procedure for the handling of grievances and the final and binding resolution of disputes.

SEC. 11 It is agreed the Union shall have the jurisdiction over the handling and operation of all electrical tools, fixtures, fittings, equipment and accessories after delivery to individual job sites. This is not to be construed in any way to prevent the common carrier or suppliers truck driver from unloading at job site.

ARTICLE III

Hours—Wage Payment—Working Conditions

SEC. 1 Eight (8) hours work between the hours of 8:00 a.m. and 4:30 p.m. or 5:00 p.m. if one (1) hour is taken for a lunch period, shall constitute a work day. Forty (40) hours within the five (5) days, Monday through Friday inclusive, shall constitute the work week. On all jobs where the majority of crafts vote to go to work at seven (7:00) or seven-thirty (7:30) o'clock, the work day shall be 7:00 a.m. to 3:30 p.m. or 7:30 a.m. to 4:00 p.m. When jobs are set upon these conditions, the Business Manager's office will be notified in advance.

SEC. 2(a) All work performed outside of the regular work hours as set forth in Section 1 of this Article and on a Saturday, Sunday, and the following holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, or days celebrated as such, shall be paid at two (2) times the Employees regular straight time hourly rate of pay. However, one and one-half (1½)times the regular hourly rate of pay shall apply, Monday through Friday inclusive, 4:30 p.m. until 12:00 midnight, on commercial maintenance and repair. This provision is restricted to remodeling and repair as it applies to existing commercial facilities. Under no circumstances will the reduced overtime be applicable to any new construction or any type of industrial work. Should any of the above named holidays occur on Sunday, the following Monday shall be considered the holiday.

(b) *Shift Work on Power Generating Stations:*

When a single shift is worked, eight hours of continuous employment as outlined in Article III, Section 1 of this agreement shall constitute a work day, beginning on Monday and through Friday of each week.

(c) *Multiple Shifts on Power Generating Stations:*

Shift work may be performed at the option of the employer. However, when shift work is performed it must continue for a period of not less than five consecutive work days. The employer shall have the right to designate the number of employees who shall work on a multiple shift basis. However, the second or third shift shall consist of not less than (5) five workmen and a foreman. The day shift shall work a regular eight hour shift as outlined in the above paragraph. The second shift shall consist of eight (8) hours elapsed time thereafter and the third shift shall consist of seven and one-half (7½) hours elapsed time after the second shift. On the second and third shifts the employees will be allowed thirty minutes for a lunch break beginning four hours after the shift starts work. The hourly rate for men on the second shift shall be twenty percent (20%) over and above the basic hourly rate for elapsed time. The hourly rate for men on the third shift shall be twenty-five percent (25%) over and above the basic hourly rate and they

shall be paid for eight hours. Overtime work at the end of any shift shall be paid for in accordance with the basic agreement. No shift premium will be paid where overtime premium rates are paid for the same hours.

The employer will (except for reasons beyond his control) give at least three days notice to employees before terminating shift work.

For the purpose of this section, the shift which begins at approximately 12:30 a.m., Saturday, shall be considered the last shift of the Friday work day.

The rate of pay for Saturdays, Sundays, and Holidays shall be paid for in accordance with Article III, Section 2(a) of the basic agreement.

SEC. 3 No work shall be performed on Labor Day except in case of emergency, and then only after permission is granted by the Business Manager of the Union.

SEC. 4 The minimum straight time rate of wages shall be:

(a) Senior General Foreman—$2.75 per hour above the journeyman wireman rate.

(b) General Foreman: $1.50 per hour above the journeyman wireman rate.

(c) Foreman: $1.00 per hour above the journeyman wireman rate.

(d) Journeyman Wireman—Eff. 12/1/76—$10.20 per hour.

(e) Apprentice rates shall be based on the following percentages of the applicable journeyman wireman rate of this agreement:

1st Year	—	40%
2nd Year	—	50%
3rd Year (1st 6 months)	—	60%
3rd Year (2nd 6 months)	—	65%
4th Year (1st 6 months)	—	70%
4th Year (2nd 6 months)	—	75%

(f) Journeyman Wireman—

Commercial Wage Rate: Effective 12/1/76—$8.87 per hour.

Industrial Work:

Any job involving facilities that manufacture, produce or process a product (excluding retail food establishments). All work performed for Utility Companies, Municipalities, and Federal or State owned projects (excluding eduational facilities). Race Tracks and Dog Tracks, Hospitals with more than fifty beds (excluding nursing homes and clinics). Shopping malls, shopping centers or business complexes with more than ten individual stores or businesses. Any business complex that includes an elevator system or escalator system in its design.

Commercial Work:

All other types of construction work not included in the definition of Industrial Work outlined above shall be considered Commercial Work.

The rates for service call work and trouble call work shall be determined by the type of work, as defined above, and be paid accordingly.

(g) Cable Splicer not less than $.50 per hour above the journeyman wireman rate.

It is agreed and understood employees performing cable splicer's work shall receive cable splicer's rate of pay. Cable splicing shall consist of the terminating or splicing of any static shielded cable rated 5 KV or above.

SEC. 5(a) Wages shall be paid weekly in cash or payroll check on a local bank. Payday shall be on Thursday of each week. Not more than three days wages may be withheld at any time. In the event the workman is not paid, waiting time at the prevailing rate shall be charged until payment is made. Any workman laid off or discharged by the Employer shall be paid his wages immediately. In the event he is not paid off, waiting time at the prevailing rate shall be charged until payment is made.

(b) Upon receipt of written authorization, the Employer agrees to deduct and forward to the Union or the designated depository the current working dues which become applicable from all members of the IBEW covered by this agreement as outlined in Article IX. The Employer shall be given thirty (30) days notice when the amount to be deducted is changed.

(c) Termination Slips—It is agreed that all employees being separated from employment shall be furnished a separation notice in writing with his final pay, such notice shall list the reason of termination and shall be signed only by his foreman. Such termination slip shall state the reason of termination from his present job and shall not bear any remarks relative to the future employment of the employee. Any employee being laid off shall be notified of same, not less than one (1) hour prior to termination.

SEC. 6(a) On jobs requiring four (4) or more journeymen, one (1) journeyman wireman will be made foreman and shall be limited to ten (10) journeymen. The foreman will be allowed to work with his tools until he has the sixth (6th) journeyman under him. All jobs requiring more than fourteen (14) workmen shall be worked under Section (b).

(b) On all jobs employing two (2) foremen, one (1) of these two (2) will be designated as general foreman who will also be permitted to act as foreman as long as the total number

of workmen does not exceed twenty (20) in number. When the twenty-first (21st) workman is on the job, an additional foreman shall be appointed and the general foreman will no longer serve in the capacity of a foreman. The general foreman and foreman shall not work with the tools nor handle material. The foreman shall be limited to ten (10) workmen.

(c) On jobs where the services of a general foreman will be required, a journeyman wireman shall be made foreman at the start of the job. The foreman shall not work with the tools on these jobs. It is therefore agreed that said jobs shall not be broken up into small jobs to bypass these provisions, regardless of the number of contracts or contractors. However, when separate contracts are awarded by others, the above shall not apply.

(d) One (1) general foreman for every four (4) foremen.

(e) The general foreman shall give orders to foreman only.

(f) On all work under this agreement, the foreman only shall give orders to the workmen.

SEC. 7 Unless a workman is instructed not to report for work on the following work day morning and he so reports and is not assigned to work, he shall receive not less than two (2) hours wages at the prevailing rate as reporting time and released immediately.

SEC. 8 When men are directed to report to a job and do not start work due to weather conditions, lack of material, or other causes beyond their control, they shall receive two (2) hours pay at the prevailing rate unless notified at least one (1) hour before starting time. When the prime contractor controls the work day, if work is started four (4) hours pay shall apply, if work is started after the fourth (4th) hour, a full day's pay shall apply.

SEC. 9 On jobs employing six (6) or more journeymen, if available, every sixth (6th) journeyman shall be sixty (60) years of age or older.

SEC. 10(a) Journeymen shall provide themselves with a conventional kit of necessary tools for the performance of their classification of work. However, no journeyman shall furnish any ladders, stock and dies, vises, hickeys, fish tapes, chisel bars, star drills, taps, wood bits, tap drills, knockout cutters and blow torch, and all other special and expendable tools.

(b) Maximum journeyman tool kit:

1 6 Ft. Rule
Screwdrivers (8" maximum blade)
1 Small Chain Wrench
1 Diagonal Pliers
1 Side Cutting Pliers
1 Needle Nose Pliers
2 Adjustable Pliers
1 Hammer (claw or ball pean 16 oz. maximum)
1 Hacksaw Frame
1 Knife
2 Pencils
1 Torpedo Level
1 Combination Square
1 Plumb & String
1 Center Punch
1 Tool Box
1 Keyhold Saw Handle
1 Lock & Key
1 Cold Chisel (¾" maximum)
1 Awl
1 Small Tap Wrench
1 Small Allen Wrench Set (¼" maximum)
1 Solenoid Voltage Tester (600 volt maximum)
1 Adjustable Wrench (crescent type, 12" maximum)
1 Sta-Kon Tool (pocket size)
1 Small Wire Stripper

SEC. 11 The Employer shall furnish all other necessary tools and equipment, first aid kits, safety equipment, including new liners for hard hats, necessary equipment to work under hazardous conditions, ice water and individual drinking cups, or drinking fountain, and sanitary toilet facilities when not

furnished by the General Contractor, or where other sanitary toilet facilities are not readily available. Workmen will be held responsible for tools or equipment issued to them, provided the Employer furnishes the necessary lockers, tool boxes, or other safe place for storage. The Employer shall also provide a safe, dry place for the workmen's tools.

SEC. 12(a) On all energized circuits or equipment that carries 440 volts or over, as a safety measure, two (2) or more journeymen wiremen must work together.

(b) Workmen shall install all electrical work in a safe and workmanlike manner and in accordance with the applicable code and contract specifications.

SEC. 13 A journeyman shall be required to make corrections on improper workmanship for which he is responsible on his own time during regular working hours, unless errors were made by orders of the Employer or the Employer's representative. Employers shall notify the Union of improper workmanship and the Union assumes responsibility for the enforcement of this provision.

SEC. 14 The representative of Local Union 915, IBEW shall be allowed access to any shop or job at any time during working hours where workmen are employed under the terms of this agreement. However, he shall first contact the general foreman, foreman, steward or contractor's representative on the job or at the shop.

SEC. 15(a) Employers in the territorial jurisdiction of the Union who require workmen to report to the shop daily for work shall pay for traveling time and furnish transportation from shop to job, job to job, and job to shop.

Employers may require employees to report daily to jobs (other than industrial) within the jurisdiction of the Local Union without payment of travel expense.

(b) On all Industrial jobs located ten (10) miles or more by road from the following County Courthouses or City Halls: Hillsborough County Courthouse, Lakeland City Hall, Highlands County Courthouse and Hardee County Courthouse within the jurisdiction of Local Union 915, each employee shall

receive $3.50 per day travel expense and such payment shall not be considered as travel time pay but each employer, at his option, may provide transportation and pay traveling time from shop to job and job to shop on such jobs. It is undertood that all electrical construction work on the properties of the U.S.P.P. Company, located on U.S. Highway 41, the Alafia River and Tampa Bay, will be subject to the $3.50 per day travel allowance.

(c) Where there is a shop located less than ten (10) miles from an industrial job and said shop and job is located beyond ten (10) miles by road from the above stated locations, the $3.50 daily expense allowance shall not apply unless the total estimated man hours exceed 360 man hours. It is therefore agreed that said job shall not be broken up into smaller contracts in order to eliminate the $3.50 daily expense regardless of number of contractors or contracts. It is further agreed that in regard to repair jobs, it may be difficult to arrive at the intent of a contract. In such cases, the Business Manager's office will assist by making spot decisions.

The intention of this section in regard to the $3.50 daily expense is to establish a fair basis for contractors to figure jobs regardless of shop or job locations within the jurisdiction of Local Union 915.

No employer will be permitted to set up a shop or job site office to bypass any provisions of the travel expense sections.

SEC. 16 In the event workmen use their own vehicles in lieu of transportation to be furnished by the Employer, as provided in Section 15 above, they shall receive fifteen cents (15¢) per mile for the use of their vehicles, provided, however, no workman shall be required to use his vehicle for transportation unless he consents thereto.

Under no circumstances shall workmen use their vehicles for delivering tools or material to or from any job for any Employer. This shall not be construed to prevent the workmen from transporting their own personal tools.

SEC. 17(a) The Employer recognizes the right of the Union to appoint a Steward at any shop or on any job where workmen are employed under the terms of this agreement. Such Steward shall be allowed sufficient time during regular working hours to see that the terms and conditions of this agreement are observed at his shop or on his job. The Union may, at its discretion, furnish pay envelopes suitable for its purpose.

Under no circumstances shall a Steward be discriminated against by an employer because of his faithful performance of duties as Steward. The Business Manager's office shall be notified twenty-four hours prior to discharging a Steward.

(b) The Business Manager or Steward shall be notified twenty-four (24) hours prior to all layoffs, when possible.

SEC. 18 Any employee of an Employer party to this agreement, employed on a weekly or monthly salary basis, shall not work with the tools at any time on work covered by this agreement.

SEC. 19 Any provision of this agreement adjudged to be unlawful by a Court of competent jurisdiction shall be treated for all purposes as null and void. The parties shall thereupon seek to negotiate substitute provisions which are in conformity with the applicable laws, but all other provisions of this agreement shall continue to be in full force and effect.

SEC. 20 Employees serving under the Services Reserve Act shall maintain all rights for all practical purposes under this agreement.

ARTICLE IV

Referral Procedure

In the interest of maintaining an efficient system of production in the industry, providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of the employees in their employment status within the area and of eliminating discrimination in employment because

of membership or nonmembership in the Union, the parties hereto agree to the following system of referral of applicants for employment:

SEC. 1 The Union shall be the sole and exclusive source of referrals of applicants for employment.

SEC. 2 The Employer shall have the right to reject any applicant for employment.

SEC. 3 The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union and such selection and referral shall not be affected in any way by rules, regulations, by-laws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements. All such selection and referral shall be in accordance with the following procedure.

SEC. 4 The Union shall maintain a register of applicants for employment established on the basis of the groups listed below. Each applicant for employment shall be registered in the highest priority Group for which he qualifies.

GROUP IA All applicants for employment who have four or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a journeyman wireman's examination given by Local Union 915 IBEW, or have been certified as a journeyman wireman by the local JATC, and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties hereto.

GROUP IB All applicants for employment who have four or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a Journeyman's examination given by a duly constituted Local Union of the IBEW and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this Agreement.

GROUP II All applicants for employment who have four or more years' experience in the trade and who have passed a journeyman's examination given by a duly constituted Local Union of the IBEW.

GROUP III All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this agreement.

GROUP IV All applicants for employment who have worked at the trade for more than one year.

If the registration list is exhausted and the Union is unable to refer applicants for employment to the Employer within 48 hours from the time of receiving the Employer's request, Saturdays, Sundays and holidays excepted, the Employer shall be free to secure applicants without using the referral procedure, but such applicants, if hired, shall have the status of "temporary employees". The Employer shall notify the Business Manager promptly of the names and social security number of such temporary employees, and shall replace such temporary employees as soon as registered applicants for employment are available under the referral procedure.

Definitions

Normal construction labor market—defined to mean the following geographical area:

Hardee, Highlands, Hillsborough and Polk Counties

The above geographical area is agreed upon by the parties to include the areas defined by the Secretary of Labor to be the appropriate prevailing wage areas under the Davis-Bacon Act to which this agreement applies, plus the commuting distance adjacent thereto, which includes the area from which the normal labor supply is secured.

Resident—means a person who has maintained his permanent home in the above defined geographical area for a period not less than one year or who, having had a permanent home in this area, has temporarily left with the intention of returning to this area as his permanent home.

Examinations—An "examination" shall include experience rating tests if such examination shall have been given prior to the date of this agreement, but from and after the date of this agreement shall include only written and/or practical examinations given by this Local Union 915, IBEW. Reasonable intervals of time for examinations are specified as "semi-annual". An applicant shall be eligible for examination if he has four years experience at the trade.

SEC. 5 The Union shall maintain an "Out of Work List" which shall list the applicants within each group in chronological order of the dates they register their availability for employment.

SEC. 6 Employers shall advise the Business Manager of the Local Union of the number of applicants needed. The Business Manager shall refer applicants to the Employer by first referring applicants in GROUP I in the order of their places on the Out of Work List and then referring applicants in the same manner successively from the Out of Work List in GROUP II, then GROUP III, and then GROUP IV. Any applicant who is rejected by the Employer shall be returned to his appropriate place within his GROUP and shall be referred to other employment in accordance with the position of his GROUP and his place within the GROUP. The only exceptions which shall be allowed in this order of referral are as follows:

(1) When the Employers states bona fide requirements for special skills and abiltities in his request for applicants, the Business Manager shall refer the first applicant on the register possessing such skills and abilities.

(2) If the age ratio clause in this agreement calls for the employment of an additional employee or employees on the basis of age, the Business Manager shall refer the first applicant on the register satisfying the applicable age

requirements provided, however, that all names in higher priority groups, if any, shall first be exhausted before such over-age reference can be made.

SEC. 7 An Appeals Committee is hereby established composed of one member appointed by the Union, one member appointed by the Employer or by the Association, as the case may be, and a Public Member appointed by both of these members.

It shall be the function of the Appeals Committee to consider any complaint of any employee or applicant for employment arising out of the administration by the Local Union of Section 3 to 6 of this Article. The Appeals Committee shall have the power to make a final and binding decision on any such complaint which shall be complied with by the Local Union. The Appeals Committee is authorized to issue procedural rules for the conduct of its business, but it is not authorized to add to, subtract from, or modify any of the provisions of this Article and its decisions shall be in accord with this Article.

SEC. 8 A copy of the referral procedure set forth in this agreement shall be posted on the Bulletin Board in the offices of the Local Union and in the offices of the Employers who are parties to this agreement.

SEC. 9 Apprentices shall be hired and transferred in accordance with the apprenticeship provisions of the agreement between the parties.

ARTICLE V

Health & Welfare Fund

SEC. 1(a) Effective December 1, 1972, 4½% of the gross labor payroll shall be paid into a Health and Welfare Fund. Such funds will be under a jointly administered Trust Fund that meets all applicable requirements of existing State and Federal laws. Approval by the Internal Revenue Service must be secured prior to purchase of coverage.

(b) The payment and payroll report shall be mailed on forms provided by the Trust Committee, to reach the designated depository not later than fifteen (15) days following the end of each calendar month.

ARTICLE VI

Apprenticeship and Training

SEC. 1 There shall be a Joint Apprenticeship and Training Committee of three (3) members representing the Chapter and three (3) members representing the Union. This Committee shall make local standards in conformity with the National Apprenticeship and Training Standards for the Electrical Contracting Industry governing the selection, qualifications, education, and training of all apprentices. It shall also be responsible for training journeymen and others. These local standards will be promptly agreed upon by the parties to this agreement and shall be registered with the National Joint Apprenticeship and Training Committee and the appropriate State or Federal Apprenticeship Registration Agency.

SEC. 2 Members of the Joint Apprenticeship and Training Committee shall be selected by the party they represent. Their term of office shall be three years unless removed by the party they represent or unless they cease to be employed by or cease to be a party to this agreement. The term of one Chapter and one Union representative shall expire each year with successors to be determined in the same manner as the original appointments were made. A Committee member may succeed himself. Each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting.

The Committee shall select from its membership, but not both from the same group, a Chairman and a Secretary who shall retain voting privileges.

The Committee shall meet at least once a month and also when called by the Chairman.

SEC. 3(a) The Committee shall supervise all matters involving apprenticeship training in conformity with the provisions of this agreement and the registered local Apprenticeship Standards. In case of a deadlock, the matter in dispute shall be referred to the parties to this agreement for settlement. Any proposed change in this agreement pertaining to apprenticeship and to training should first be considered by the Committee for their recommendation before being acted upon by the parties to this agreement.

(b) The Committee may establish or authorize a Joint Sub-Committee to be similarly constituted and selected for authorized training programs other than apprentice training programs.

SEC. 4(a) In order to provide diversity of training or work opportunities, the Committee shall have full authority to transfer apprentices from one job or employer to another. All transfers and assignments for work shall be issued by the Committee through the referral office.

(b) The Committee is hereby instructed and authorized to employ a full-time Training Director at such time as is possible and practical.

The Committee shall delegate to the Director that responsibility and authority deemed necessary by the Committee.

SEC. 5 All apprentices must enter the program through the Committee and shall not be eligible for employment until they have been indentured to the Committee. An apprentice who has completed his probationary period may be removed from training by the Committee, in accordance with its rules, for cause. Such removal by the Committee also cancels his classification of apprentice and the opportunity to complete his training.

SEC. 6 An employer shall employ only indentured apprentices secured from the Committee. The Committee shall allow each qualified employer a ratio of one apprentice to three (3) journeymen but only when indentured apprentices are available. Such ratio shall not be exceeded on any job. (This

does not prevent one apprentice from working on a job when there are less than the maximum ratio of journeymen on that job.)

The ratio of one apprentice to three journeymen is to be applied as follows:

1 Journeyman and 1 Apprentice
2 Journeymen and 1 Apprentice
3 Journeymen and 1 Apprentice
4 Journeymen and 2 Apprentices
5 Journeymen and 2 Apprentices
6 Journeymen and 2 Apprentices
7 Journeymen and 3 Apprentices

After the seventh (7th) journeyman and the third (3rd) apprentice, the ratio shall be one (1) apprentice to each additional three (3) journeymen.

SEC. 7 An apprentice shall be under the direct personal supervision of a journeyman at all times. When a journeyman and an apprentice are working together and it becomes necessary for the journeyman to leave for a short period of time, it should not be necessary for any apprentice to accompany the journeyman. An apprentice shall not be permitted to work alone on any job, however, regardless of type of work involved nor regardless of the length of time needed to do the job, except as provided in this section.

SEC. 8 The parties to this agreement shall enter into a Joint Apprenticeship and Training Trust Fund Agreement which shall conform to Section 302 of the Labor-Management Relations Act of 1947, as amended.

The Trustees authorized under this Trust Agreement are hereby authorized to determine the reasonable value of any facilities, materials, or services furnished by either party.

All Funds shall be disbursed in accordance with this Trust Agreement.

SEC. 9 Effective December 1, 1975, all employers subject to the terms of this agreement shall contribute ten cents (10¢)

per man hour worked for each employee of their gross monthly labor payroll.

SEC. 10 Maximum tool kit for apprentices through three (3) years (4th year apprentice tool kit same as for journeymen):

1 Pair Side Cutting Pliers
2 Adjustable Pliers
1 Pocket Knife
1 Torpedo Level
1 Hack Saw Frame
1 6' Rule
2 Screw Drivers (not over 8" Blade)
1 Hammer (claw or ball pean 16 oz. maximum)

ARTICLE VII

Vacation Fund

Each employer shall contribute an amount equal to 4% of the employee's gross labor payroll to the Local Union 915 Vacation Fund on behalf of each employee who is employed pursuant to the terms of this agreement, which fund shall be a jointly administered trust fund that meets all applicable requirements of existing State and Federal Laws.

Payments to the Fund shall be forwarded to a designated depository not later than fifteen (15) calendar days following the end of each calendar month.

ARTICLE VIII

Local Pension Fund

Effective December 1, 1975, the Employer shall contribute three percent (3%) of gross labor payroll to a Local Pension Fund which shall be established in accordance with all federal and state laws.

ARTICLE IX

Electrical Industry Accounts

All payments to the respective accounts pursuant to the terms of this agreement shall be listed on joint forms provided for such. All forms are to be typewritten.

The payment and form must reach the Trustees or their agent not later than fifteen (15) days following the end of each calendar month for which they are due. After said fifteen (15) days, the Union may remove all employees of the delinquent employer. Such removal does not constitute a breach of this agreement.

The cost of the forms shall be borne by each of the respective accounts to which payments are made.

Employers who fail to remit as provided above shall be subject to having this agreement terminated upon seventy-two (72) hours notice in writing served by the Union, provided the employer fails to show satisfactory proof that the required payments have been made.

In the event that Employers fail to remit all payments to the respective accounts pursuant to the terms of this agreement within thirty (30) days after the same shall be due and it shall become necessary for the Union to place the collection of said payments in the hands of an attorney, then in that event the Employer shall be responsible to the Union for all costs in connection with the collection of said payments, including a reasonable attorney's fee, which shall not be less than 15% of the delinquent amount.

SIGNED FOR FLORIDA WEST COAST CHAPTER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION	SIGNED FOR LOCAL UNION 915 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
Chairman, Tampa Division	President
Chapter Manager	Business Manager
Date	Date

MEMORANDUM OF AGREEMENT

RE: CLARIFICATION OF SENIOR GENERAL FOREMAN PROVISION

In accord with directive of Article 1, Section 6(a) of the Collective Bargaining Agreement between Florida West Coast Chapter, NECA and Local 915, International Brotherhood of Electrical Workers, we, the undersigned, stipulate the following provisions as to Senior General Foreman to prevail as if the same had been made a part of the Agreement:

> When more than one General Foreman is required, one General Foreman shall become Senior General Foreman. The Senior General Foreman shall be in charge of the General Foreman. General Foremen shall give orders to foremen only.

SIGNED FOR FLORIDA WEST COAST CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

DEAN J. MCDONALD

Chapter Manager

11-26-75

Date

SIGNED FOR LOCAL UNION 915, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

J. G. CAIN

Business Manager

11-24-75

Date

AMENDMENT

The inside Construction Agreement between the Florida West Coast Chapter, NECA and Local Union 915 IBEW, is hereby mutually amended effective July 1, 1977 to read as follows:

ARTICLE II, SECTION 1. The Union understands the Employer is responsible to perform the work required by the owner. The Employer shall, therefore, have no restrictions except those specifically provided for in the collective bargaining agreement, in planning, directing and controlling the operation of all his work, in deciding the number and kind of employees to properly perform [sic] the work, in hiring and laying off employees, in transferring employees from job to job within the Local Union's geographical jurisdiction, in determining the need and number as well as the person who will act as Foreman, in requiring all employees to observe the Employer's and/or owner's rules and regulations not inconsistent with this Agreement, in requiring all empolyees to observe all safety regulations, and in discharging employees for proper cause.

ARTICLE III, SECTION 2 (b . SHIFT WORK. When so elected by the contractor, multiple shifts of at least five (5) days' duration may be worked. When two (2) or three (3) shifts are worked:

The first shift (day shift) shall be worked between the hours of 8:00 a.m. and 4:30 p.m. Workmen on the day shift shall receive eight (8) hours' pay at the regular hourly rate for eight (8) work [sic].

The second shift (swing shift) shall be worked between the hours of 4:30 p.m. and 12:30 a.m. Workmen on the "swing shift" shall receive eight (8) hours' pay at the regular hourly rate plus 10% for seven and one-half (7½) hours' work.

The third shift (graveyard shift) shall be worked between the hours of 12:30 a.m. and 8:00 a.m. Workmen on the "graveyard shift" shall receive eight (8) hours' pay at the regular hourly rate plus 15% for seven (7) hours' work.

A lunch period of thirty minutes shall be allowed on each shift. All overtime work required after the completion of a regular shift shall be paid at one and one-half times the "shift" hourly rate.

There shall be no pyramiding of overtime rates and double the straight-time rate shall be the maximum compensation for any hour worked.

There shall be no requirement for a day shift when either the second or third shift is worked.

ARTICLE VI, SECTION 6. The Committee is authorized to indenture a total number of apprentices not to exceed a ratio of one apprentice to three journeyman wiremen who are normally employed under the terms of this Agreement.

An individual Employer shall employ only indentured apprentices secured from the Committee. The Committee will determine whether or not an individual Employer with one, two or any number of Journeyman wiremen is entitled to an apprentice, but no Employer is guaranteed any number of apprentices.

The Committee shall allow each qualified Employer a ratio of one apprentice to three Journeyman wireman [sic] when indentured apprentices are available. Such ratio shall apply on any job. However, this does not prevent one apprentice from working on a job with one journeyman when there are less than the allowable ratio of journeymen on that job.

This ratio is to be interpreted to allow the following apprentice to journeyman relation on any job or in any shop.

1 Apprentice to 1 Journeyman
1 Apprentice to 2 Journeymen
1 Apprentice to 3 Journeymen
2 Apprentices to 4 Journeymen
2 Apprentices to 5 Journeymen
2 Apprentices to 6 Journeymen
3 Apprentices to 7 Journeymen

etc.

ARTICLE II, SECTION 5(b). It is agreed that in accord with the National Employees Benefit Agreement entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended, that unless authorized otherwise by the National Employees Benefit Board, the individual Employer will forward monthly to the designated Local Secretary-Treasurer, an amount equal to 3% of his gross monthly labor payroll which he is obligated to pay to the employees in this bargaining unit, and a completed payroll report prescribed by the National Board. The payment shall be made by check or draft and shall constitute a debt due and owing to the National Board on the last day of each calendar month, which may be recovered by suit initiated by the National Board or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate Local Secretary-Treasurer not later than fifteen (15) calendar days following the end of each calendar month.

Individual Employers who fail to remit as provided above shall be additionally subject to having this Agreement terminated upon seventy-two (72) hours' notice, in writing, being served by the Union, provided the individual Employer fail [sic] to show satisfactory proof that the required payments have been paid to the Local Secretary-Treasurer.

The failure of an individual Employer to comply with the applicable provisions of the National Employees Benefit Agreement shall also constitute a breach of this Labor Agreement.

ARTICLE IX. The parties agree to the establishment of a legally constituted trust to be called the National Electrical Industry Fund.

Each individual Employee shall contribute one percent (1%) of the gross labor payroll to be forwarded monthly to the National Electrical Industry Fund in a form and manner prescribed by the trustees no later than fifteen (15) calendar days following the last day of the month in which the labor was performed. Failure to do so will be considered a breach of this Agreement on the part of the individual Employer.

The National Electrical Contractors association [sic] will be responsible to see that the objects of the fund, as outlined in the trust, are adhered to strictly.

No part of the funds collected under this trust shall be used for purely social activities.

No part of the funds collected under this trust shall be used for any purpose which is held to be in conflict with the interests of the International Brotherhoood of Electrical Workers and its Local Unions.

FLORIDA WEST COAST CHAPTER, NECA	LOCAL UNION 915, IBEW
DEAN J. MCDONALD	J. G. CAIN
Chapter Manager	Business Manager
1/31/77	1/31/77
Date	Date

APPROVED

FEB 4 1977

INTERNATIONAL OFFICE—I.B.E.W.

CHARLES H. PILLARD President

QUESTION PRESENTED

Whether an employer-member of a multiemployer bargaining unit, who has given written authority to the multiemployer association to represent the employer for "all matters contained in or pertaining to the current approved labor agreement", and also binds itself to comply with "all of the terms and conditions of employment contained in the [current approved agreement] and all approved amendments thereto", can avail itself of all the benefits flowing from that agreement and amendments thereto, but repudiate any provision of the agreement or amendments thereto that is a "permissive" rather than a "mandatory" subject of bargaining under Act.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	iii,iv
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
Letters of Assent	3
The 1% National Electrical Industry Fund	5
The Eleventh Circuit Decision	6
REASONS FOR DENYING THE WRIT	9
I. General Observations	9
II. The Decision Below Does Not Involve The Issue Of Withdrawal From A Multi-Employer Collective Bargaining Agreement And Does Not Conflict With The Decisions Of This Court And The National Labor Relations Board	11
III. The Decision Below Does Not Raise A Conflict Between The Eleventh And Sixth Circuits	15
IV. The Decision Below Does Not Raise A Conflict Between The Eleventh And Tenth Circuits On The Ratification Issue	17
CONCLUSION	19

APPENDIX

Respondent's Exhibit 19 - Letter of Assent A..... 1a

Respondent's Exhibit 7 - Letter of Assent B..... 2a

Respondent's Exhibit 22 - Agreement between Florida West Coast Chapter, NECA, and Local 915, International Brotherhood of Electrical Workers, Tampa, Florida, Effective December 1, 1976 to November 30, 1977 ..... 3a

Respondent's Exhibit 8 - NECA-GRAM..... 30a

TABLE OF AUTHORITIES

Cases:	Page
Arco Electric Co. v. NLRB, 618 F.2d 698 (10th Cir. 1980)	18
Bonanno Linen Service v. NLRB, _____U.S._____, 102 S.Ct. 720, 723, n. 3 (1982)	11,13
Central New Mexico Chapter, NECA, 152 NLRB 1604 (1965)	14
Guerini Stone Co. v. P.J. Carlin Construction Co., 240 U.S. 264 (1916)	12,13,14
H.S. Brooks Electric, Inc., 233 NLRB 889 (1977)	14
Local Union No. 11, IBEW v. Jandon Electric Co., 429 F.2d 584 (9th Cir. 1968)	18
Lodges 743 and 1746, etc. v. United Aircraft, 434 F.2d 422, 441 (2d Cir. 1975)	14
NCA v. NECA, Case Nos. 80-1808, 80-1809	15
NLRB v. Truck Drivers, Local 449 (Buffalo Linen), 353 U.S. 87 (1957)	12
NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958)	11
Nelson Electric, 241 NLRB 545 (1979) enfd. 638 F.2d 965 (6th Cir. 1981)	14,15,16
Nelson Electric, 638 F.2d 965 (6th Cir. 1981)	14,15,16,17
Northern Nevada Chapter, NECA, 131 NLRB 550 (1961)	14
Retail Associates, 120 NLRB 388 (1958)	12,13
Roosevelt Materials Co. v. Nolan Brothers, Inc., 264 F.2d 807, 808-809 (10th Cir. 1959)	14
Seymour v. Coughlin Co., 609 F.2d 346 (9th Cir. 1979)	12,13
Wagor v. Cal Kovens Construction Corp., 382 F.2d 813 (5th Cir. 1967)	18
Wayne Electric, Inc., 226 NLRB 409 (1976)	14

STATUTES:	
29 U.S.C. 185(a)	2
29 U.S.C. 158(a)(5)	2

No. 81-2211

IN THE

Supreme Court of the United States

October Term 1981

DEAN J. McDONALD, as Collection Agent
for the Trustees of the
National Electrical Industry Fund
Petitioner

v.

HAMILTON ELECTRIC, INC. of FLORIDA
Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 666 F.2d 509 and is set forth in the Appendix to the petition for writ of certiorari filed by Petitioner. Pet. App. 1 (a)-9(a). The Court's denial of the Petitioner's petition for rehearing on March 3, 1982 is also set forth in the Appendix to the petition for writ of certiorari filed by Petitioner. Pet. App. p. 18(a). The decision of the District Court also appears in the Appendix submitted by Petitioner. Pet. App. pp. 10a-17a.

JURISDICTION

The jurisdictional basis for this Court's review of the decision of the Court of Appeals for the Eleventh Circuit is described in the petition for certiorari.

STATUTORY PROVISIONS INVOLVED

United States Code, Title 29.
Section 185(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 158(a) It shall be an unfair labor practice for an employer -

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(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).[1]

STATEMENT OF THE CASE

Respondent, Hamilton Electric, Inc. of Florida (Hamilton) is a Florida corporation engaged in electrical contracting. Although Hamilton hires labor from the local unions of the International Brotherhood of Electrical Workers (IBEW), Hamilton has never been an express party to a collective bargaining agreement with the IBEW local unions.

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[1]Petitioner cites Section 8(a)(5) of the Labor-Management Relations Act, 29 U.S.C. 158(a)(5) as a statutory provision involved. This case was not brought under §8(a)(5) of the LMRA, 29 U.S.C. 158(a)(5) but rather arose under §301 of the LMRA, 29 U.S.C. 185(a). The refusal by Respondent to pay into the National Electrical Industry Fund (NEIF) was not a violation of 29 U.S.C. 158(a)(5) since Respondent never assented to, agreed, or operated under any collective bargaining agreement which included the NEIF.

The Florida West Coast Chapter of the National Electrical Contractor's Association (FWCC, NECA) is party to various collective bargaining agreements with separate local unions of the International Brotherhood of Electrical Workers (IBEW). The FWCC, NECA and the IBEW locals negotiate collective bargaining agreements for the geographic area of the particular IBEW local establishing wages, hours and terms and conditions of employment for employees covered by the local IBEW labor agreement.

Employers who are not members of the FWCC or NECA become bound to the local IBEW agreements by executing short-form agreements (Letters of Assent).[2] By executing Letters of Assent, non-member employers agree to adhere to the terms and conditions of the current collective bargaining agreements between the locals of the IBEW and the FWCC, NECA and authorize the FWCC, NECA to negotiate matters pertaining to or amending the agreements. Hamilton is not and never has been a member of the FWCC or NECA. For many years Hamilton has operated under the working conditions established by the IBEW local agreements and has utilized union labor from the IBEW. Hamilton first became obligated in writing to local IBEW agreements in 1974 and 1976. Hamilton's obligation to the IBEW agreements in 1974 and 1976 was derived from the Letters of Assent (A and B).

LETTERS OF ASSENT

Individual electrical contractors who are not members of FWCC or NECA, such as Hamilton, are required to sign Letters of Assent in order to utilize IBEW labor in the geographic jurisdiction of the particular IBEW local.

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[2]Letters of Assent (A and B) are IBEW local union forms which are routinely submitted by IBEW locals to contractors, who are not members of NECA, requesting union labor (Res. App. pp. 1a-2a are a reproduction of Letters of Assent A and B executed by Respondent in 1974 and 1976 respectively which were introduced at trial as Defendant's Exhibits 19 and 7).

There are two types of Letters of Assent: Type "A" authorizes the FWCC, NECA to act as the signatory's collective bargaining agent for all matters contained in the current approved labor agreement between FWCC, NECA and the IBEW local. Letter of Assent A specifically limits the obligation of the signatory employer to "all matters contained in or pertaining to the current approved labor agreement" between the FWCC and the IBEW local (Res. App. p. 1a). Letter of Assent A can be terminated by the signatory employer only by giving written notice of termination to the FWCC and the particular local union at least 150 days prior to the anniversary date of the then current labor agreement.[3] An employer signing a Letter of Assent A is considered a member of the NECA chapter bargaining unit.

The Letter of Assent B binds the signatory employer to the terms of the local IBEW-NECA collective bargaining agreement and all approved amendments to the terms of the local agreement but does not make the signatory employer part of the bargaining unit. Letter of Assent B specifically obligates the employer "to comply with all of the terms and conditions of employment contained in the [current approved agreement] and all approved amendments thereto." (Res. App. p. 2a). Although Letter of Assent B is similarly specific concerning the obligations of the signatory employer, Letter of Assent B, unlike A, provides for a specific termination date and automatically renews itself unless 60 days notice of intent not to renew is given.

Hamilton became obligated to "all matters contained in or pertaining to the current approved Inside and Residential labor agreements between the FWCC and Local Union 915, IBEW"

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[3]Hamilton never submitted a 150 day notice to terminate and had no reason to do so. Hamilton was satisfied with operating pursuant to "all matters contained in or pertaining to the current approved labor agreement" which agreement did not contain the National Electrical Industry Fund (NEIF) during the pertinent time period (Respondent Appendix pgs. 3a-23a are a reproduction of one of the assented-to agreements which was introduced at trial as Defendant's Exhibit 22 effective from December 1, 1976 to November 30, 1977.)

through execution of Letters of Assent A in 1974 (Res. App. p. 1a). Hamilton was required to sign a Letter of Assent B for IBEW Local Union 941 in November, 1976 for the 1976 labor agreement with Local Union 941. The Letter of Assent B binded Hamilton to "all of the terms and conditions of employment contained in the above-mentioned agreement and all approved amendments thereto" (Res. App. p. 2a).[4] Hamilton also executed a Letter of Assent B in 1976 for Local Union 308, IBEW. None of the collective bargaining agreements to which Hamilton assented in 1974 and 1976 contained the National Electrical Industry Fund provision (Res. App. pp. 3a-23a).

Subsequent to the execution of the Letters of Assent by Hamilton and while they were still in effect, NECA and the IBEW in 1976 negotiated changes and amendments to provisions contained in, pertaining to, or related to the IBEW labor agreements which Hamilton had previously assented to (increase in employee pension benefits (NEBF); management rights; shift work; and apprentice ratios). At the same time, NECA and the IBEW created the National Electrical Industry Fund (NEIF) which required electrical contractors who were not members of NECA to contribute 1% of their gross payroll to an industry fund for the purpose of financing FWCC and NECA activities.

THE 1% NATIONAL ELECTRICAL INDUSTRY FUND

The 1% NEIF was established on the national level by the National Organization of NECA and the IBEW in 1976 to become effective July 1, 1977. Along with the establishment of the NEIF in 1976, three amendments to the IBEW-NECA agreements were negotiated nationally and subsequently adopted in local IBEW agreements. The three amendments, unlike the NEIF, supplemented and pertained to provisions con-

[4]Hamilton had first signed a Letter of Assent B with Local Union 941 in 1974 and was then required to execute additional separate Letters of Assent B for both 1975 and 1976 labor agreements with Local Union 941, IBEW.

tained in prior local IBEW agreements - increase in contributions to pension fund (NEBF); management rights; shift work; and apprentice ratios.

The only funds included in the local IBEW labor agreements assented to by Hamilton were funds for the benefit of the employees (health and welfare; employee pensions (NEBF); employee vacation funds; and apprenticeship and training funds). The NEIF, although denominated an industry promotion fund, is a membership fee charged to electrical contractors who are members of the FWCC, NECA, and this charge is also assessed against non-member contractors such as Hamilton who utilize IBEW labor. Hamilton is not and never has been a member of the FWCC or NECA. Hamilton has never paid into the NEIF. When Hamilton first learned of such a payment through a NECA-GRAM (Res. App. p. 24a), he was operating under assented-to labor agreements which did not include any such fund. Hamilton immediately communicated to the Petitioner and the FWCC his objections to the NEIF.[9] On March 7, 1977, Hamilton received copies of the modified collective bargaining agreements and immediately sent letters to all IBEW locals stating that he would not contribute to the NEIF, was not a member of NECA and would not become a member.

THE ELEVENTH CIRCUIT DECISION

The U.S. Court of Appeals for the Eleventh Circuit reversed the judgment of the District Court which held that the Letters of Assent signed by Hamilton in 1974 and 1976 obligated Hamilton to the 1% NEIF. The Eleventh Circuit disagreed with the conclusions of the District Court and the grounds upon which the District Court's decision was based. The District Court held first that Hamilton authorized FWCC, NECA to

[9]The October, 1976 NECA-GRAM (Res. App. p. 24a) did not refer to any agreement that the NEIF would be incorporated into but rather referred to a "new agreement". The new agreement, never assented to by Hamilton, is reproduced in Petitioner's Appendix at pages 19a-30a.

bind it to the NEIF adopted in July, 1977 by executing Letters of Assent which obligated Hamilton to collective bargaining agreements in 1974 and 1976. The District Court, without focusing on the precise language in the Letters of Assent which frames the obligation of Hamilton, concluded that the Letters of Assent binded Hamilton to the collective bargaining agreements which included the 1% NEIF and granted the FWCC, NECA plenary authority to bind Hamilton to the NEIF. Additionally, the District Court concluded that Hamilton was obligated to pay into the NEIF on the basis of acceptance and ratification of local IBEW agreements that did not include the NEIF.

The Eleventh Circuit analyzed the language of the Letters of Assent in conjunction with the collective bargaining agreements referred to in the Letters of Assent in determining whether Hamilton was obligated to the NEIF (Pet. App. pp. 4a-6a). After interpreting the plain wording in the applicable clauses of the Letters of Assent and the collective bargaining agreements assented to by Hamilton, the Court concluded that the NEIF fell beyond the scope of the Letters of Assent and authority given FWCC, NECA by the Letters of Assent (Pet. App. pp. 5a-6a). The Court's conclusion was premised on the fact that none of the collective bargaining agreements to which Hamilton assented in 1974 and 1976 contained an NEIF provision and that Hamilton agreed, through execution of the Letters of Assent, to be bound by any matter contained in the extant collective bargaining agreements as well as any changes negotiated by the FWCC, NECA which pertained to or amended the agreements assented to (Pet. App. pp. 5a-6a).

The Court, following the plain meaning of the clauses in the Letters of Assent, concluded that the Letters of Assent executed by Hamilton specifically limited the authority of FWCC, NECA as bargaining representative to "those matters contained in, pertaining to, or amending the 'current' labor agreement" (Pet. App. p. 6a note 6). Although the Court analyzed that Article II in the collective bargaining agreements assented to "generally"

limited the scope of the agreements to mandatory subjects of bargaining, the Court recognized that "permissive" as well as "mandatory" subjects could be assented to (Pet. App. p. 6a). Further, the Court acknowledged that if the NEIF had pertained to or amended the assented-to collective bargaining agreements then Hamilton would be bound to that provision (Pet. App. pp. 5a-6a).

Although the Court addressed the question of whether an "industry promotion fund" is a mandatory or permissive subject of bargaining (Pet. App. p. 7a), the essential thrust of the Court's decision concerning Hamilton's obligation to the NEIF is the fact that the NEIF does not pertain to or amend any term or provision contained in the assented-to collective bargaining agreements.[8] The Court did not conclude as Petitioner suggests that Hamilton was not bound to the NEIF simply because an industry promotion fund is a permissive rather than a mandatory subject of bargaining.

The Eleventh Circuit also concluded that Hamilton did not ratify the NEIF provision or the collective bargaining agreements containing the NEIF provision by continuing to follow and adhere to the terms and provisions of the collective bargaining agreements which Hamilton had previously assented.

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[8]Permissive subjects of bargaining such as interest arbitration (Art. I, Res. App. p. 1a); internal union discipline (Art. II, Sec. 6, Res. App. p. 8a); and scope of the bargaining unit (Art. II, Sec. 3, Res. App. p. 6a) were included in the assented-to agreements and in agreements prior thereto. Therefore, they were "permissive" provisions, unlike the NEIF, which were "contained in" or "pertained to" the assented-to collective bargaining agreements within the specific language of the Letters of Assent. The Letters of Assent authorized the FWCC, NECA to bind Hamilton to terms and provisions pertaining to or amending the assented-to collective bargaining agreements. The July, 1977 provisions which pertained to or amended terms and provisions contained in the assented-to collective bargaining agreements fell within the scope of the Letters of Assent. Unlike the NEIF, Article II, Employer Rights - Union Rights (Res. App. p. 5a); Article III, Sec. 2(b) - Shift Work (Res. App. p. 9a); Ratio of Apprentices to Journeymen in Article VI, Sec. 6 (Res. App. p. 20a); and Pension Fund (NEBF) Benefits in Article II, Sec. 5(b) (Res. App. p. 6a) were provisions already contained in the assented-to collective bargaining agreements (Res. App. pp. 3a-23a).

Additionally, the Court concluded that since Hamilton expressly rejected and never contributed to the NEIF there was no ratification of the provision.

REASONS FOR DENYING THE WRIT

I.

General Observations

The fundamental assertion of Petitioner - that a party who is a bound to a multi-employer collective bargaining agreement cannot repudiate any provision of the agreement that is a "permissive" rather than "mandatory" subject of bargaining - is correct. No doubt, as Petitioner argues, the stability of multi-employer bargaining would be upset if parties were allowed to reject permissive subjects of bargaining previously agreed to. Petitioner's argument incorrectly presupposes that Respondent, by executing Letters of Assent in 1974 and 1976, granted plenary authority to FWCC, NECA to act as its collective bargaining representative, that the NEIF falls within the language of the Letters of Assent, and that the modified agreements containing the NEIF are the same agreements Respondent assented to.

Petitioner's argument is predicated on the Letters of Assent authorizing FWCC, NECA to negotiate or adopt the NEIF provision regardless of the fact that the Letters of Assent specifically limit that authority to provisions and terms "pertaining to", "contained in" or "amending" the assented-to collective bargaining agreements. Also, the fact that the NEIF was not included in any collective bargaining agreement assented to by Hamilton is ignored.

The reversal of the judgment entered by the District Court is predicated on errors found by the Eleventh Circuit which are not addressed in the Petition. The Eleventh Circuit held that by the execution of the Letters of Assent, Respondent "agreed to

be bound by any matter contained in the extant collective bargaining agreements as well as any changes negotiated by the FWCC, NECA pertaining to or amending the agreements" (Pet. App. p. 5a). Since none of the collective bargaining agreements to which Hamilton expressly assented contained an NEIF provision and the NEIF did not pertain to or amend any term or provision in the assented-to agreements, the Court concluded that Respondent "could not be bound by the adoption of a permissive subject of bargaining not provided for by the assented-to labor agreements" (Pet. App. p. 6a). The Eleventh Circuit decision was correctly based on the interpretation and construction of the wording in the Letters of Assent and the collective bargaining agreements referred to in the Letters of Assent.

Although the Eleventh Circuit for the first time addressed the question of whether an "industry promotion fund" was a permissive or mandatory subject of bargaining, the Court did not conclude that an employer who assents to a collective bargaining agreement through the execution of Letters of Assent can repudiate any provision or amendments to provisions of the assented-to agreements that are "permissive" rather than "mandatory" subjects of bargaining. In fact, the Court recognized that when permissive subjects of bargaining are included in, pertain to, or amend the assented-to labor agreements, the assenting employer could be obligated to the permissive provisions, even an industry fund provision.

> Thus only if the NEIF provision *pertained to* or *amended* the assented-to collective bargaining agreements can we conclude that the appellant authorized the appellee to bind it to the NEIF provision. (Pet. App. pp. 5a-6a)
>
> ***
>
> That is not to say that the FWCC, NECA and Local Unions could not have adopted a permissive subject of bargaining and that the appellant could not have expressly assented to or ratified such a provision. In the absence of

> subsequent assent or ratification, however, the appellant could not be bound by the adoption of a permissive subject of bargaining not provided for by the assented-to labor agreement. (Pet. App. p. 6a).

Neither the holding of the Eleventh Circuit concerning the interpretation and construction of the Letters of Assent nor the Court's conclusion regarding ratification is premised on the NEIF qualifying as a "permissive" rather than "mandatory" subject of bargaining.

The Petitioner asks this Court to consider whether an employer who has agreed to become bound to a multi-employer collective bargaining agreement can then repudiate any provision of the agreement or amendment thereto which is a "permissive" rather than a "mandatory" subject of bargaining. Whether or not this question is appropriate for this Court's consideration, the present case is not a suitable vehicle. Although the Court concluded that under Article II of the collective bargaining agreements assented to, the scope of the agreements was "generally" limited to mandatory subjects of bargaining, citing *NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 (1958) (Pet. App. p. 6a), the Court's decision did not hold that any "permissive" provision could be repudiated (Pet. App. p. 6a).

II

The Decision Below Does Not Involve The Issue Of Withdrawal From a Multi-Employer Collective Bargaining Agreement And Does Not Conflict With The Decisions Of This Court And The National Labor Relations Board

The question of whether or not an industry fund is either a permissive or mandatory subject of bargaining was discussed by the Eleventh Circuit. However, this Court's policy of encouraging multi-employer unit stability under *Bonanno Linen Service v. NLRB*, _____U.S._____, 102 S. Ct. 720, 723, n. 3

(1982) is not disturbed by the decision below. Since this case does not involve the question of an attempted withdrawal from an established multi-employer bargaining unit, the continuity of the established policy of this Court favoring multi-employer bargaining is not broken by the decision below. *NLRB v. Truck Drivers, Local 449 (Buffalo Linen)*, 353 U.S. 87, (1957). Likewise, the rules followed by the National Labor Relations Board (NLRB) limiting withdrawal from multi-employer units are not affected. *Retail Associates*, 120 NLRB 388 (1958).

The Eleventh Circuit's decision was based on the plain wording of the Letters of Assent. The Court concluded that the Letters of Assent specifically limited the authority of the FWCC to act as Hamilton's bargaining representative "to those matters contained in, pertaining to, or amending the 'current' labor agreement" (Pet. App. p. 6a, note 6). The NEIF provision substantially modified the labor agreements Hamilton operated under and assented to. A modified multi-employer collective bargaining agreement is not a renewal or extension of the original collective bargaining agreement. *Seymour v. Coughlin Co.*, 609 F.2d 346 (9th Cir. 1979).[7] It is well established that when one agreement incorporates the terms and conditions contained in another agreement, a party to the first agreement is not bound to matters not contained in or referred to in the second agreement. *Guerini Stone Co. v. P. J. Carlin Construction Co.*, 240 U.S. 264 (1916). This Court's holding in *Guerini Stone, supra*, has been consistently followed when interpreting contracts of every nature, including those governed by the Labor Management Relations Act. The decision below, concluding

[7] In *Seymour*, supra, the question presented was whether the employer was bound to the new, modified and amended master labor agreement on the basis of his execution of a prior short-form agreement which did not terminate. The Ninth Circuit in *Seymour*, agreeing with the District Court's decision that the employer was not bound by the modified master labor agreement, concluded that to bind the employer to future modifications and amendments of the master labor agreement regardless of whether the modifications or amendments pertain to the original agreement assented to would be to require the employer to purchase something in the blind.

that the NEIF provision would have to *pertain to* or *amend* the assented-to collective bargaining agreements before Hamilton could be bound to the provision, cited this Court's holding in *Guerini Stone Co. v. P. J. Carlin Construction Co., supra.* (Pet. App. pp. 5a-6a; note 6 at 6a). Petitioner does not cite, nor have Respondents been able to uncover, any decision adopting principles contrary to those announced in *Seymour* and *Guerini.*

The local IBEW agreements in effect from 1974 through 1978 were agreements that Hamilton was obligated to by virtue of executing Letters of Assent in 1974 and 1976 and those agreements did not contain the 1% NEIF (Res. App. 3a-23a). Any inference that the modified collective bargaining agreements with the NEIF are the same agreements which Hamilton assented to is incorrect. The first formal communication to Hamilton concerning the NEIF was through a NECA-GRAM dated October 22, 1976 which referred to the "new agreement" (Res. App. p. 24a).

Plainly, a party to an assented-to collective bargaining agreement cannot withdraw or refuse to abide by its terms and provisions. E.g., *Bonanno Linen Service v. NLRB, supra;* and *Retail Associates,* 120 NLRB 388, *supra.* Just as candidly, improper withdrawal from a collective bargaining agreement is not an issue when the agreement was never assented to. Hamilton never assented to the agreements which included the NEIF and had no reason to withdraw from the assented-to agreements. Simply, since Respondent could not have assented to provisions or agreements which fell outside of the language in the Letters of Assent, withdrawal from those provisions or agreements are not at issue. This case does not involve a party directly involved in multi-employer collective bargaining who agreed to a collective bargaining agreement containing the NEIF and then refused to abide by the provision.

The National Labor Relations Board cases cited by Petitioner stand for the principle that firms which sign a Letter of

Assent A delegate to a local Chapter of NECA authority to represent them in collective bargaining and that such firms comprise a multi-employer bargaining group.[8] Neither the National Labor Relations Board cases or the Sixth Circuit decision in *Nelson Electric Co. v. NLRB*, 638 F.2d 965 (6th Cir. 1981) addressed the issue of whether an employer could be bound to the NEIF or a collective bargaining agreement containing the NEIF by virtue of executing a Letter of Assent A.

Under the reasoning of the decision below, the local chapters of NECA are required to negotiate and adopt provisions which are related to the terms and conditions of the assented-to agreements. The decision is premised on the plain and unambiguous language of the Letters of Assent read in conjunction with the labor agreements assented to. Although collective bargaining agreements are not governed by the same common law concepts which control private contracts, the realities of collective bargaining and the interrelationship of permissive and mandatory subjects in the bargaining process do not change the intent of the parties as expressed in the four corners of the Letters of Assent. *Guerini Stone Co. v. P. J. Carlin Construction Co., supra; Roosevelt Materials Co. v. Nolan Brothers, Inc.*, 264 F.2d 807, 808-809 (10th Cir. 1959); *Lodges 743 and 1746, etc. v. United Aircraft*, 434 F.2d 422, 441 (2d Cir. 1975). Thus, despite the absence of an authoritative decision by this Court on Letters of Assent and the NEIF, the questions raised below appear settled.

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[8] *Central New Mexico Chapter, NECA*, 152 NLRB 1604 (1965) (firms signing a Letter of Assent A comprise a multi-employer bargaining group); *H.S. Brooks Electric, Inc.*, 233 NLRB 889 (1977) (signatories to Letters of Assent A constitute a unit appropriate for collective bargaining); *Nelson Electric*, 241 NLRB 545 (1979) (bargaining authority of NECA goes beyond the initial agreement assented to, however, the question of whether the NEIF or an agreement containing the NEIF went beyond the agreement assented to was not addressed); *Wayne Electric, Inc.*, 226 NLRB 409 (1976) (Letters of Assent bind signatory employer to bargaining agreements then effective and signatory employer is part of the multi-employer unit); *Northern Nevada Chapter, NECA*, 131 NLRB 550 (1961) (Letter of Assent A designates NECA as bargaining representative and signatory employer is included in the multi-employer unit).

The Eleventh Circuit decision stands for the principle that an employer cannot be bound in collective bargaining beyond that which he specifically agrees to. The distinction between mandatory and permissive subjects of bargaining was not the essence of the holding below. Petitioner's concern regarding the possibility of "mini-withdrawals" from individual provisions of multi-employer collective bargaining agreements and the "serious threat to the stability of multi-employer bargaining units" would only be justified if Hamilton had assented to the NEIF or the agreements containing the NEIF.

III

The Decision Below Does Not Raise A Conflict Between The Eleventh And Sixth Circuits

Research indicates that the only other Court of Appeals which has addressed an issue concerning the NEIF is the United States Court of Appeals for the Fourth Circuit in *NCA v. NECA*, Case Nos. 80-1808, 80-1809 wherein the Fourth Circuit on May 17, 1982 affirmed the District Court's holding that the NEIF violates the antitrust laws.[9]

Although the Sixth Circuit Court of Appeals in *Nelson Electric Co. v. NLRB*, 638 F.2d 965 (6th Cir. 1981) reviewed an NLRB decision involving a Letter of Assent A, *Nelson Electric Co.*, 241 NLRB 545 (1979), there was no mention by the Board in *Nelson* of whether or not the NEIF went beyond the scope of the language limiting the authority of the local chapter of NECA. Unlike the Eleventh Circuit decision below, the essential issue in *Nelson* did not involve the NEIF. Neither the Board or the Sixth Circuit in *Nelson* discussed the question of whether the NEIF pertained to or amended the agreement assented to by the employer on the basis of the wording in the Letter of Assent A read in conjunction with the collective bargaining agreement

[9]The NEIF will not be enforceable against any employer if the Fourth Circuit decision is sustained.

assented to. The main issues raised by the employer's arguments in *Nelson* were (1) whether the Letter of Assent A authorized the local NECA chapter to bargain collectively for the employer beyond the expiration date of the agreement assented to for jurisdictional purposes; and (2) whether the employer was only bound by the terms contained in the agreement assented to. The Board's discussion of the issues in *Nelson* is absent any reference to the NEIF:

> Since the then-current agreement expired on October 31, 1976, the argument continues, Nelson Electric did not grant any authority to NECA to bargain for it after that date, is not a member of nor a party to a multi-employer unit after that date, and does not meet the standards necessary to assert jurisdiction, since jurisdiction may be asserted only through the NECA and not Nelson Electric. Respondents directly argue that, because Nelson Electric did not authorize NECA to bargain for it collectively except for matters contained in the then-current agreement, it is not bound by the terms of any agreement after October 31, 1976 and thus had no responsibility to recognize the union after that date. Thus, as a substantive matter, Respondents argue that they did not violate the Act in the respects alleged. *Nelson Electric, supra,* 241 NLRB at 550.

The Sixth Circuit Court of Appeals decision in *Nelson* held that (1) the Board properly asserted jurisdiction over an employer who was a member of the multi employer bargaining unit represented by the union; and (2) that the new electrical contracting businesses were "alter-egos" of the old business and were therefore bound to adhere to the terms of the collective bargaining agreement which the prior business had assented to. The Sixth Circuit's discussion of the Letter of Assent A in *Nelson* is absent any mention of whether it grants plenary authority to the local chapter of NECA to the extent that an employer is bound to the NEIF or an agreement containing the NEIF:

> Nelson Electric's signing of the "Letter of Assent - A" is sufficient to subject it to the jurisdiction of the Board.

> Nelson Electric's contention that the "Letter of Assent - A" merely bound it to the terms of the collective bargaining agreement ignores the explicit language in the "Letter of Assent - A" expressly designating the NECA as Nelson Electric's collective bargaining representative. [638 F.2d at 967]

The only other reference to Letter of Assent A in *Nelson* by the Sixth Circuit was the conclusion that the employer did not timely withdraw NECA's authority to bargain under the terms of the Letter of Assent A. In the decision below, untimely withdrawal was not an issue. Hamilton had no reason to withdraw from the agreements he assented to which did not contain the NEIF (Res. App. pp. 3a-23a).

Although the decision below and Nelson involved an interpretation of the IBEW Letter of Assent A and the extent to which a party signatory to a Letter of Assent A is bound, the essential issue was not identical. *Nelson* did not address the specific language of the Letter of Assent A as it relates to the NEIF.

IV

The Decision Below Does Not Raise A Conflict Between The Eleventh And Tenth Circuits On The Ratification Issue

In the decision below, the Eleventh Circuit recognized that the collective bargaining agreements with the NEIF provision were not the same agreements which the Respondent assented to by executing the Letters of Assent in 1974 and 1976.

> Nor can appellant be held to have ratified the unauthorized NEIF provision by continuing to adhere to and enjoy the benefits of the terms of the collective bargaining agreements to which it was contractually bound as a result of previously executed Letters of Assent. (Pet. App. p. 8a).

The factual basis for the Eleventh Circuit's decision on the

ratification issue was not present in *Arco Electric Co. v. NLRB*, 618 F.2d 698 (10th Cir. 1980). The Court's conclusion on the ratification issue was based on the following facts: Hamilton notified all of the business managers of the IBEW locals on March 7, 1977 that he would not comply with the NEIF provision (Pet. App. p. 8a); Hamilton executed a Letter of Assent in April, 1977 which explicitly rejected the NEIF (Pet. App. p. 4a, note 3, 8a); and Hamilton never contributed to the Fund (Pet. App. p. 8a). The employer in *Arco, supra*, unlike Hamilton, operated under the agreement which contained the NEIF and never objected to the NEIF provision or the contract containing the NEIF provision until after the effective date of the NEIF.

> Arco complied with all the terms of this agreement until July, 1977. In June, 1977 Arco was notified of an amendment to the agreement increasing contributions to various union funds. After discussions with union officials, Arco submitted a payroll report in September, 1977, on which was written "final report". [618 F.2d 698, 699]

Unlike the facts in *Arco*, Hamilton immediately disclaimed any obligation to pay into the Fund. Immediately upon learning of the 1% NEIF through a NECA-GRAM in October, 1976, (Res. App. p. 24a), Hamilton communicated to Petitioner that he would not be bound by any agreement which included the NEIF provision. It is well settled that in order to bind contractors to industry funds or new agreements containing industry funds on the basis of ratification there must be an unequivocal and express understanding to make such payments. *Wagor v. Cal Kovens Construction Corp.*, 382 F.2d 813 (5th Cir. 1967); *Local Union No. 11, IBEW v. Jandon Electric Co.*, 429 F.2d 584 (9th Cir. 1968). Since the facts in *Arco* are contrary to the facts here, the decision below is not in conflict with *Arco*. The holding below that Hamilton did not ratify the NEIF is also consistent with the Fifth Circuit decision in *Wagor v. Cal Kovens Construction Corp., supra*, wherein the Fifth Circuit held on similar facts that the employer had not ratified an industry fund provision.

CONCLUSION

The question presented by Petitioner would be worthy of consideration if Respondent had assented to the NEIF or the collective bargaining agreements containing the NEIF. Respondent further suggests that the Court may prefer to await further development of the Fourth Circuit decision involving the NEIF. For the foregoing reasons, Respondent believes that the Court should deny the Writ of Certiorari.

Respectfully submitted,

ALLEN M. BLAKE
Counsel of Record
R. SAMUEL LEONARD
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(813) 228-9897
Attorneys for Respondent

EXHIBIT 19

LETTER OF ASSENT - A

In signing this letter of assent, the undersigned firm does hereby authorize[1] *Florida West Coast Chapter, NECA* as its collective bargaining representative for all matters contained or pertaining to the current approved[2] *Inside* labor agreement between the *Florida West Coast Chapter, NECA* and Local Union[3] *915* IBEW. This authorization, in compliance with the current approved labor agreement, shall become effective on the[4] *6th* day of *May, 74*. It shall remain in effect until terminated by the undersigned employer giving written notice to the *Florida West Coast Chapter, NECA* and to the Local Union at least one hundred fifty (150) days prior to the then current anniversary date of the aforementioned approved labor agreement.

SUBJECT TO THE APPROVAL OF THE INTERNATIONAL PRESIDENT, IBEW

NAME OF FIRM [5]HAMILTON ELECTRIC, INC. OF FLA. (print or type)	**APPROVED** International Office-I.B.E.W. Charles H. Pillard-President
SIGNED FOR THE PRESIDENT BY[6] A. C. McClaskey (original signature)	SIGNED FOR LOCAL UNION *915*, IBEW BY[6] J.G. Cain (original signature)
TITLE President	TITLE Business Manager
DATE 5-7-74	DATE May 9, 1974

INSTRUCTIONS

1 NAME OF CHAPTER OR ASSOCIATION
Insert full name of NECA Chapter or Contractors Association involved.

2 TYPE OF AGREEMENT
Insert type of agreement. Example: Inside, Outside Utility, Outside Commercial, Outside Telephone, Residential, Motor Shop, Sign, Tree Trimming, etc. The Local Union must obtain a separate assent to each agreement the employer is assenting to.

3 LOCAL UNION
Insert Local Union Number.

4 EFFECTIVE DATE
Insert date that the assent for this employer becomes effective. Do not use agreement date unless that is to be the effective date of this Assent.

5 EMPLOYERS' NAME
Print or type Company name.

6 SIGNATURES
International Office copy must contain actual signatures—not reproduced—of a Company representative as well as a Local Union Officer.

A MINIMUM OF FOUR COPIES OF THE JOINTLY SIGNED ASSENTS MUST BE SENT TO THE INTERNATIONAL OFFICE FOR PROCESSING.

IMPORTANT: These forms are printed on special paper and no carbon paper is required for duplicate copies. Remove from the pad enough copies of the form for a complete set and complete the form; the image will transfer to succeeding copies. CAUTION: do not write on padded forms; unused forms below will be spoiled.

IBEW Form 302

This is a reproduction of the Letter of Assent A executed by the Respondent which was introduced at trial as Defendant's Exh. 19.

EXHIBIT 7

LETTER OF ASSENT - B

This is to certify that the undersigned employer has examined a copy of the current approved[1] *Inside* labor agreement[2] *Southern Division Florida West Coast Chapter* and Local Union[3] *941,* IBEW.

The undersigned employer hereby agrees to comply with all of the terms and conditions of employment contained in the above mentioned agreement and all approved amendments thereto. It is understood that the signing of this letter of assent shall be as binding on the undersigned employer as though he had signed the above referred to agreement, including any approved amendments thereto.

This letter of assent shall become effective for the undersigned employer on the[4] *1st* day of *November, 1976* and shall remain in effect until the[5] *31st* day of *October, 1977.*
(termination date)

If the undersigned employer does NOT intend to renew this assent he shall so notify the Local Union in writing at least sixty (60) days prior to the termination date.

SUBJECT TO THE APPROVAL OF THE INTERNATIONAL PRESIDENT, IBEW

NAME OF FIRM
[6]HAMILTON ELECTRIC, INC. OF FLORIDA

APPROVED
International Office-I.B.E.W.
Charles H. Pillard, President

SIGNED FOR THE EMPLOYER
BY[7] A. C. McClaskey
(original signature)
TITLE President
DATE 11-11-76

SIGNED FOR LOCAL UNION *941,* IBEW
BY[7] Harold E. Walker
(original signature)
TITLE Business Manager
DATE 11-15-76

INSTRUCTIONS

1 TYPE OF AGREEMENT
Insert type of agreement. Example: Inside, Outside Utility, Outside Commercial, Outside Telephone, Residential, Motor Shop, Sign, Tree Trimming, etc. The Local Union must obtain a separate assent to each agreement the employer is assenting to.

2 NAME OF CHAPTER OR ASSOCIATION
Insert full name of NECA Chapter or Contractors Association involved.

3 LOCAL UNION
Insert Local Union Number.

4 EFFECTIVE DATE
Insert date that the assent for this employer becomes effective. Do not use agreement date unless that is to be the effective date of this Assent.

5 TERMINATION DATE
This date cannot exceed the anniversary date of the current approved agreement but can be for a *lesser* period of time.

6 EMPLOYERS' NAME
Print or type Company name.

7 SIGNATURES
International Office copy must contain actual signatures—not reproduced—of a Company representative as well as Local Union Officer.

A MINIMUM OF FOUR COPIES OF THE JOINTLY SIGNED ASSENTS MUST BE SENT TO THE INTERNATIONAL OFFICES FOR PROCESSING.

IMPORTANT: These forms are printed on special paper and no carbon paper is required for duplicate copies. Remove from the pad enough copies of the form for a complete set and complete the form; the image will transfer to succeeding copies. CAUTION: do not write on padded forms; unused forms below will be spoiled.

IBEW Form 303

This is a reproduction of the Letter of Assent executed by the Respondent in 1976 which was introduced at trial as Defendant's Exhibit 7.

DEFENDANT
EXHIBIT 22

AGREEMENT

between

FLORIDA WEST COAST CHAPTER

N.E.C.A.

and

LOCAL 915

INTERNATIONAL

BROTHERHOOD

of

ELECTRICAL WORKERS

TAMPA, FLORIDA

Effective

DECEMBER 1, 1976

Expires

NOVEMBER 30, 1977

AGREEMENT

Agreement by and between the Florida West Coast Chapter, NECA and Local Union #915, IBEW.

It shall apply to *all firms* who sign a *letter of assent* to be bound by this Agreement.

As used hereinafter in this Agreement, the term Chapter shall mean the Florida West Coast Chapter, NECA, and the term "Union" shall mean Local Union 915, IBEW.

The term "Employer" shall mean an individual firm who has been recognized by an assent to this Agreement.

BASIC PRINCIPLES

The Employer and the Union have a common and sympathetic interest in the Electrical Industry. Therefore, a working system and harmonious relations are necessary to improve the relationship between the Employer, the Union, and the Public. Progress in industry demands a mutuality of confidence between the Employer and the Union. All will benefit by continuous peace and by adjusting any differences by rational, common sense methods. Now, therefore, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

ARTICLE I

Effective date — Changes — Grievances — Disputes

Sec. 1 This Agreement shall take effect December 1, 1976 and shall remain in effect until November 30, 1977 unless otherwise specifically provided for herein. It shall continue in effect from year to year thereafter, from December 1 through November 30 of each year, unless changed or terminated in the way later provided herein.

Sec. 2 (a) Either party desiring to change or terminate this agreement must notify the other in writing at least 90 days prior to the anniversary date.

(b) Whenever notice is given for changes, the nature of the changes desired must be specified in the notice.

(c) The existing provisions of the agreement shall remain in full force and effect until a conclusion is reached in the matter of proposed changes.

(d) Unresolved issues in negotiations that remain on the 20th of the month preceding the next regular meeting of the Council on Industrial Relations, may be submitted jointly or unilaterally by the parties to this agreement to the Council for adjudication prior to the anniversary of the agreement.

(e) When a case has been submitted to the Council, it shall be the responsibility of the negotiating committee to continue to meet weekly in an effort to reach settlement on the local level prior to the meeting of the Council.

(f) Notice by either party of a desire to terminate this agreement shall be handled in the same manner as a proposed change.

Sec. 3 This agreement shall be subject to change or supplement at any time by mutual consent of the parties hereto. Any such change or supplement agreed upon shall be reduced to writing, signed by the parties hereto, and submitted to the International Office of the IBEW and the National Office of NECA for approval, the same as this agreement.

Sec. 4 There shall be no stoppage of work either by strike or lockout because of any proposed changes in this agreement or dispute over matters relating to this Agreement. All such matters must be handled as stated herein.

Sec. 5 There shall be a Labor-Management Committee of three representing the Union and three representing the Employer. It shall meet regularly at such stated times as it may decide. However, it shall meet within 48 hours when notice is given by either party. It shall select its own Chairman and Secretary.

Sec. 6 All grievances or questions in dispute shall be adjusted by the duly authorized representatives of each of the

parties to this agreement. In the event that these two are unable to adjust any matter within 48 hours, they shall refer the same to the Labor-Management Committee.

Sec. 7 All matters coming before the Labor-Management Committee shall be decided by majority vote. Four members of the committee, two from each of the parties hereto, shall be a quorum for the transaction of business, but each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting.

Sec. 8 Should the Labor-Management Committee fail to agree or to adjust any matter, such shall then be referred to the Council on Industrial Relations for the Electrical Contracting Industry for adjudication. The Council's decisions shall be final and binding on both parties hereto.

ARTICLE II

Employer Rights — Union Rights

Sec. 1 Members of the Union, except those meeting the requirement of "Employer" as defined herein, shall not contract for any electrical work. Local Union members taking out licenses as contractors shall not be allowed to work back and forth as contractors or journeymen wiremen, as the occasion arises.

Sec. 2 The Union agrees that if during the life of this agreement it grants to any other Employer in the Electrical Contracting Industry, any better terms or conditions than those set forth in this agreement, such better terms or conditions shall be made available to the Employer under this agreement and the Union shall immediately notify the Employer of any such concessions.

Sec. 3 The Employer recognizes the union as the exclusive representative of all its employees performing work within the jurisdiction of the union for the purpose of collective bargaining in respect to wages, hours of employment and conditions of employment. Such representation shall not be altered by contracts with other labor organizations. The jurisdiction of

work and the territorial jurisdiction of such work shall be as determined by the International President of the IBEW. Any employer performing work outside the territorial jurisdiction of Local Union 915, IBEW, shall perform such work in accordance with the agreement of the Local Union of the IBEW having jurisdiction of such work.

Sec. 4 Certain qualifications, knowledge, experience, and financial responsibility are required of everyone desiring to be an Employer in the Electrical Industry. Therefore, an Employer who contracts for electrical work is a person, firm or corporation having these qualifications and maintaining a permanent place of business and suitable financial status to meet payroll requirements, and employing not less than one journeyman wireman regularly.

(a) To provide that an individual desiring to enter the electrical contracting business on a small scale, it is agreed by the parties to this agreement that an individual employer shall be permitted to work with the tools for a period not to exceed two years. The individual employer will be allowed to work with the tools at any time during this two year period providing the employees do not exceed four in number, including himself. When the employer works with the tools, he shall comply fully with all provisions of this agreement.

Sec. 5 (a) For all employees covered by this agreement, the Employer shall carry Workmen's Compensation Insurance with a company authorized to do business in the State of Florida, Social Security, and such other protective insurance as may be required by the laws of the State of Florida, and shall also make contributions for all employees to the Florida Unemployment Compensation Commission. The Employer shall furnish satisfactory proof to the Union, upon the Union's demand, that all the required provisions of this Section are being complied with.

(b) It is agreed that in accord with the National Employees Benefit Agreement entered into between the National Electrical Contractors Association and the International Brotherhood of Electrical Workers on September 3, 1946, as amended, that unless authorized otherwise by the National Employees Benefit Board, the individual employer will forward monthly to the designated Local Employees Benefit Board an

amount equal to 1% of his gross monthly labor payroll, which he is obligated to pay to the employees in this bargaining unit, and a completed payroll report prescribed by the National Board. The payment shall be made by check or draft and shall constitute a debt due and owing to the National Board on the last day of each calendar month, which may be recovered by suit initiated by the National Board or its assignee. The payment and the payroll report shall be mailed to reach the office of the appropriate Local Board not later than fifteen (15) calendar days following the end of each calendar month.

Individual employers who fail to remit as provided above shall be additionally subject to having this agreement terminated upon seventy-two (72) hours notice in writing being served by the Union, provided the individual employer fails to show satisfactory proof that the required payments have been paid to the Local Employees Benefit Board.

The failure of an individual employer to comply with the applicable provisions of the National Employees Benefit Agreement shall also constitute a breach of this labor agreement.

(c) When an injury occurs on the job, it shall be the duty of the Foreman or man in charge to immediately notify the doctor or the hospital to which the patient is being taken of the insurance or coverage to facilitate immediate admittance.

The name and address of the Employer's Industrial Insurance Carrier shall be furnished to the persons in charge of the job at the beginning of each job, and it shall be the duty of these employees to apprise themselves of this information.

If any employee becomes sick or is injured to the extent that removal from the job or shop is necessary to provide medical attention, the employer shall provide transportation to and from the doctor's office or hospital. The employee shall be paid for all lost time. If, at the discretion of the doctor, the employee is unable to return to work, he shall not lose any time for that day, not to exceed 8 hours straight time. (It is the intent of this section to provide that the employer shall pay the employee for time away from the job at the regular straight time rate of pay).

The employer shall furnish and immediately fill out an injury report form on each employee injury that occurs. The report form shall state the date, time and all other pertinent information of the accident. It shall be the duty of the person in charge of the job to see that the form is promptly furnished to the contractor's office. Copies of the report shall be mailed to the Union. Such shall be concluded within ten (10) days after the injury report has been received by contractor's office.

Sec. 6 The Union reserves the right to discipline its members for violation of its laws, rules and agreements.

Sec. 7 This agreement does not deny the right of the Union or its representatives to render assistance to other labor organizations by removal of its members from jobs when necessary and when the Union or its proper representative decides to do so; but no removal shall take place until notice is first given to the Employer involved.

Sec. 8 When such a removal takes place, the Union or its representative shall direct the workmen on such job to carefully put away all tools, materials, equipment, or any other property of the Employer, in a safe manner. The Union will be financially responsible for any loss to the Employer for neglect in carrying out this provision, but only when a safe place is provided for these by the Employer.

Sec. 9 No Employer or member of a firm (Employer) shall be permitted to work with the tools on work covered by the terms of this agreement—except in case of any emergency or minor repairs, and then only when a journeyman wireman is not available. Whenever it is necessary for an Employer or member of a firm (Employer) to perform any work, he shall notify the Steward or Business Manager of the Union of the location and nature of the work.

Sec. 10 The local Union is a part of the International Brotherhood of Electrical Workers, and any violation or annulment by an individual employer of the approved agreement of this or any other Local Union of the IBEW, other than violations of Paragraph 2 of this section, will be sufficient cause for the cancellation of his agreement by the Local Union, after a

finding has been made by the International President of the Union that such a violation or annulment has occurred.

The subletting, assigning or transfer by an individual employer of any work in connection with electrical work to any person, firm or corporation not recognizing the IBEW or one of its local unions as the collective bargaining representative of his employees on any electrical work in the jurisdiction of this or any other local union to be performed at the site of the construction, alteration, painting, or repair of a building, structure or other work, will be deemed a material breach of this agreement.

All charges of violations of Paragraph 2 of this section shall be considered as a dispute and shall be processed in accordance with the provisions of this agreement covering the procedure for the handling of grievances and the final and binding resolution of disputes.

Sec. 11 It is agreed the Union shall have the jurisdiction over the handling and operation of all electrical tools, fixtures, fittings, equipment and accessories after delivery to individual job sites. This is not to be construed in any way to prevent the common carrier or suppliers truck driver from unloading at job site.

ARTICLE III

Hours — Wage Payment — Working Conditions

Sec. 1 Eight (8) hours work between the hours of 8:00 a.m. and 4:30 p.m. or 5:00 p.m. if one (1) hour is taken for a lunch period, shall constitute a work day. Forty (40) hours within the five (5) days, Monday through Friday inclusive, shall constitute the work week. On all jobs where the majority of crafts vote to go to work at seven (7:00) or seven-thirty (7:30) o'clock, the work day shall be 7:00 a.m. to 3:30 p.m. or 7:30 a.m. to 4:00 p.m. When jobs are set upon these conditions, the Business Manager's office will be notified in advance.

Sec. 2 (a) All work performed outside of the regular work hours as set forth in Section 1 of this Article and on a Saturday, Sunday, and the following holidays: New Year's Day, Memorial

Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, or days celebrated as such, shall be paid at two (2) times the Employees regular straight time hourly rate of pay. However, one and one-half (1½) times the regular hourly rate of pay shall apply, Monday through Friday inclusive, 4:30 p.m. until 12:00 midnight, on commercial maintenance and repair. This provision is restricted to remodeling and repair as it applies to existing commercial facilities. Under no circumstances will the reduced overtime be applicable to any new construction or any type of industrial work. Should any of the above named holidays occur on Sunday, the following Monday shall be considered the holiday.

(b) *Shift Work on Power Generating Stations:*

When a single shift is worked, eight hours of continuous employment as outlined in Article III, Section 1 of this agreement shall constitute a work day, beginning on Monday and through Friday of each week.

(c) *Multiple Shifts on Power Generating Stations:*

Shift work may be performed at the option of the employer. However, when shift work is performed it must continue for a period of not less than five consecutive work days. The employer shall have the right to designate the number of employees who shall work on a multiple shift basis. However, the second or third shift shall consist of not less than (5) five workmen and a foreman. The day shift shall work a regular eight hour shift as outlined in the above paragraph. The second shift shall consist of eight (8) hours elapsed time thereafter and the third shift shall consist of seven and one-half (7½) hours elapsed time after the second shift. On the second and third shifts the employees will be allowed thirty minutes for a lunch break beginning four hours after the shift starts work. the hourly rate for men on the second shift shall be twenty percent (20%) over and above the basic hourly rate for elapsed time. The hourly rate for men on the third shift shall be twenty-five percent (25%) over and above the basic hourly rate and they shall be paid for eight hours. Overtime work at the end of any shift shall be paid for in accordance with the basic agreement. No shift premium will be paid where overtime premium rates are paid for the same hours.

The employer will (except for reasons beyond his control) give at least three days notice to employees before terminating shift work.

For the purpose of this Section, the shift which begins at approximately 12:30 a.m., Saturday, shall be considered the last shift of the Friday work day.

The rate of pay for Saturdays, Sundays, and Holidays shall be paid for in accordance with Article III, Section 2(a) of the basic agreement.

Sec. 3 No work shall be performed on Labor Day except in case of emergency, and then only after permission is granted by the Business Manager of the Union.

Sec. 4 The minimum straight time rate of wages shall be:

(a) Senior General Foreman — $2.75 per hour above the journeyman wireman rate.

(b) General Foreman: $1.50 per hour above the journeyman wireman rate.

(c) Foreman: $1.00 per hour above the journeyman wireman rate.

(d) Journeyman Wireman: Eff. 12/1/76 — $10.20 per hour.

(e) Apprentice rates shall be based on the following percentages of the applicable journeyman wireman rate of this agreement:

1st Year	— 40%
2nd Year	— 50%
3rd Year (1st 6 months)	— 60%
3rd Year (2nd 6 months)	— 65%
4th Year (1st 6 months)	— 70%
4th Year (2nd 6 months)	— 75%

(f) Journeyman Wireman —

Commercial Wage Rate: Effective 12/1/76 — $8.87 per hour.

Industrial Work:

Any job involving facilities that manufacture, produce or process a product (excluding retail food establishments). All work performed for Utility Companies, Municipalities, and Federal or State owned projects (excluding educational facilities). Race Tracks and Dog Tracks, Hospitals with more than fifty beds (excluding nursing homes and clinics). Shoppng malls, shopping centers or business complexes with more than ten individual stores or businesses. Any business complex that includes an elevator system or escalator system in its design.

Commercial Work:

All other types of construction work not included in the definition of Industrial Work outlined above shall be considered Commercial Work.

The rates for service call work and trouble call work shall be determined by the type of work, as defined above, and be paid accordingly.

(g) Cable Splicer not less than $.50 per hour above the journeyman wireman rate.

It is agreed and understood employees performing cable splicer's work shall receive cable splicer's rate of pay. Cable splicing shall consist of the terminating or splicing of any static shielded cable rated 5 KV or above.

Sec. 5 (a) Wages shall be paid weekly in cash or payroll check on a local bank. Payday shall be on Thursday of each week. Not more than three days wages may be withheld at any time. In the event the workman is not paid, waiting time at the prevailing rate shall be charged until payment is made. Any workman laid off or discharged by the Employer shall be paid his wages immediately. In the event he is not paid off, waiting time at the prevailing rate shall be charged until payment is made.

(b) Upon receipt of written authorization, the Employer agrees to deduct and forward to the Union or the designated depository the current working dues which become applicable from all members of the IBEW covered by this agreement as outlined in Article IX. The Employer shall be given thirty (30) days notice when the amount to be deducted is changed.

(c) Termination Slips — It is agreed that all employees being separated from employment shall be furnished a separation notice in writing with his final pay, such notice shall list the reason of termination and shall be signed only by his foreman. Such termination slip shall state the reason of termination from his present job and shall not bear any remarks relative to the future employment of the employee. Any employee being laid off shall be notified of same, not less than (1) hour prior to termination.

Sec. 6 (a) On jobs requiring four (4) or more journeymen, one (1) journeyman wireman will be made foreman and shall be limited to ten (10) journeymen. The foreman will be allowed to work with his tools until he has the sixth (6th) journeyman under him. All jobs requiring more than fourteen (14) workmen shall be worked under Section (b).

(b) On all jobs employing two (2) foremen, one (1) of these two (2) will be designated as general foreman who will also be permitted to act as foreman as long as the total number of workmen does not exceed twenty (20) in number. When the twenty-first (21st) workman is on the job, an additional foreman shall be appointed and the general foreman will no longer serve in the capacity of a foreman. The general foreman and foreman shall not work with the tools nor handle material. The foreman shall be limited to ten (10) workmen.

(c) On jobs where the services of a general foreman will be required, a journeyman wireman shall be made foreman at the start of the job. The foreman shall not work with the tools on these jobs. It is therefore agreed that said jobs shall not be broken up into small jobs to bypass these provisions, regardless of the number of contracts or contractors. However, when separate contracts are awarded by others, the above shall not apply.

(d) One (1) general foreman for every four (4) foremen.

(e) The general foreman shall give orders to foremen only.

(f) On all work under this agreement, the foreman only shall give orders to the workmen.

Sec. 7 Unless a workman is instructed not to report for work on the following work day morning and he so reports and is not assigned to work, he shall receive not less than two (2) hours wages at the prevailing rate as reporting time and released immediately.

Sec. 8 When men are directed to report to a job and do not start work due to weather conditions, lack of material, or other causes beyond their control, they shall receive two (2) hours pay at the prevailing rate unless notified at least one (1) hour before starting time. When the prime contractor controls the work day, if work is started four (4) hours pay shall apply, if work is started after the fourth (4th) hour, a full day's pay shall apply.

Sec. 9 On jobs employing six (6) or more journeymen, if available, every sixth (6th) journeyman shall be sixty (60) years of age or older.

Sec. 10 Journeymen shall provide themselves with a conventional kit of necessary tools for the performance of their classification of work. However, no journeyman shall furnish any ladders, stock and dies, vises, hickeys, fish tapes, chisel bars, star drills, taps, wood bits, tap drills, knockout cutters and blow torch, and all other special and expendable tools.

(b) Maximum journeyman tool kit:

1 6 Ft. Rule
Screwdrivers (8" maximum blade)
1 Small Chain Wrench
1 Diagonal Pliers
1 Side Cutting Pliers
1 Needle Nose Pliers

2 Adjustable Pliers
1 Hammer (claw or ball pean 16 oz. maximum)
1 Hacksaw Frame
1 Knife
2 Pencils
1 Torpedo Level
1 Combination Square
1 Plumb & String
1 Center Punch
1 Tool Box
1 Keyhole Saw Handle
1 Lock & Key
1 Cold Chisel (¾" maximum)
1 Awl
1 Small Tap Wrench
1 Small Allen Wrench Set (¼" maximum)
1 Solenoid Voltage Tester (600 volt maximum)
1 Adjustable Wrench (crescent type, 12" maximum)
1 Sta-Kon Tool (pocket size)
1 Small Wire Stripper

Sec. 11 The Employer shall furnish all other necessary tools and equipment, first aid kits, safety equipment, including new liners for hard hats, necessary equipment to work under hazardous conditions, ice water and individual drinking cups, or drinking fountain, and sanitary toilet facilities when not furnished by the General Contractor, or where other sanitary toilet facilities are not readily available. Workmen will be held responsible for tools or equipment issued to them, provided the Employer furnishes the necessary lockers, tool boxes, or other safe place for storage. The Employer shall also provide a safe, dry place for the Workmen's tools.

Sec. 12(a) On all energized circuits or equipment that carries 440 volts or over, as a safety measure, two (2) or more journeymen wiremen must work together.

(b) Workmen shall install all electrical work in a safe and workmanlike manner and in accordance with the applicable code and contract specifications.

Sec. 13 A journeyman shall be required to make corrections on improper workmanship for which he is responsible on his own time during regular working hours, unless errors were made by orders of the Employer or the Employer's representative. Employers shall notify the Union of improper workmanship and the Union assumes responsibility for the enforcement of this provision.

Sec. 14 The representative of Local Union 915, IBEW, shall be allowed access to any shop or job at any time during working hours where workmen are employed under the terms of this agreement. However, he shall first contact the general foreman, foreman, steward or contractor's representative on the job or at the shop.

Sec. 15(a) Employers in the territorial jurisdiction of the Union who require workmen to report to the shop daily for work shall pay for traveling time and furnish transportation from shop to job, job to job, and job to shop.

Employers may require employees to report daily to jobs (other than industrial) within the jurisdiction of the Local Union without payment of travel expense.

(b) On all Industrial jobs located ten (10) miles or more by road from the following County Courthouses or City Halls: Hillsborough County Courthouse, Lakeland City Hall, Highlands County Courthouse, and Hardee County Courthouse within the jurisdiction of Local Union 915, each employee shall receive $3.50 per day travel expense and such payment shall not be considered as travel time pay but each employer, at his option, may provide transportation and pay traveling time from shop to job and job to shop on such jobs. It is understood that all electrical construction work on the properties of the U.S.P.P. Company, located on U.S. Highway 41, the Alafia River and Tampa Bay, will be subject to the $3.50 per day travel allowance.

(c) Where there is a shop located less than ten (10) miles from an industrial job and said shop and job is located beyond ten (10) miles by road from the above stated locations, the $3.50 daily expense allowance shall not apply unless the total estimated man hours exceed 360 man hours. It is therefore

agreed that said job shall not be broken up into smaller contracts in order to eliminate the $3.50 daily expense regardless of number of contractors or contracts. It is further agreed that in regard to repair jobs, it may be difficult to arrive at the intent of a contract. In such cases, the Business Manager's office will assist by making spot decisions.

The intention of this section in regard to the $3.50 daily expense is to establish a fair basis for contractors to figure jobs regardless of shop or job locations within the jurisdiction of Local Union 915.

No employer will be permitted to set up a shop or job site office to bypass any provisions of the travel expense sections.

Sec. 16 In the event workmen use their own vehicles in lieu of transportation to be furnished by the Employer, as provided in Section 15 above, they shall receive fifteen cents (15¢) per mile for the use of their vehicles, provided, however, no workman shall be required to use his vehicle for transportation unless he consents thereto.

Under no circumstances shall workmen use their vehicles for delivering tools or material to or from any job for any Employer. This shall not be construed to prevent the workmen from transporting their own personal tools.

Sec. 17(a) The Employer recognizes the right of the Union to appoint a Steward at any shop or on any job where workmen are employed under the terms of this agreement. Such Steward shall be allowed sufficient time during regular working hours to see that the terms and conditions of this agreement are observed at his shop or on his job. the Union may, at its discretion, furnish pay envelopes suitable for its purpose.

Under no circumstances shall a Steward be discriminated against by an employer because of his faithful performance of duties as Steward. The Business Manager's office shall be notified twenty-four hours prior to discharging a Steward.

(b) The Business Manager or Steward shall be notified twenty-four (24) hours prior to all layoffs, when possible.

Sec. 18 Any employee of an Employer party to this agreement, employed on a weekly or monthly salary basis, shall not work with the tools at any time on work covered by this agreement.

Sec. 19 Any provision of this agreement adjudged to be unlawful by a court of competent jurisdiction shall be treated for all purposes as null and void. The parties shall thereupon seek to negotiate substitute provisions which are in conformity with the applicable laws, but all other provisions of this agreement shall continue to be in full force and effect.

Sec. 20 Employees serving under the Services Reserve Act shall maintain all rights for all practical purposes under this agreement.

ARTICLE IV

Referral Procedure

In the interest of maintaining an efficient system of production in the industry, providing for an orderly procedure of referral of applicants for employment, preserving the legitimate interests of the employees in their employment status within the area and of eliminating discrimination in employment because of membership or non-membership in the Union, the parties hereto agree to the following system of referral of applicants for employment:

Sec. 1 The Union shall be the sole and exclusive source of referrals of applicants for employment.

Sec. 2 The Employer shall have the right to reject any applicant for employment.

Sec. 3 The Union shall select and refer applicants for employment without discrimination against such applicants by reason of membership or non-membership in the Union and

such selection and referral shall not be affected in any way by rules, regulations, by-laws, constitutional provisions or any other aspect or obligation of Union membership policies or requirements. All such selection and referral shall be in accordance with the following procedure.

Sec. 4 The Union shall maintain a register of applicants for employment established on the basis of the groups listed below. Each applicant for employment shall be registered in the highest priority Group for which he qualifies.

GROUP IA All applicants for employment who have four or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have padded a journeyman wireman's examination given by Local Union 915 IBEW, or have been certified as a journeyman wireman by the Local JATC, and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties hereto.

GROUP IB All applicants for employment who have four or more years experience in the trade, are residents of the geographical area constituting the normal construction labor market, have passed a Journeyman's examination given by a duly constituted Local Union of the IBEW and who have been employed for a period of at least one year in the last four years under a collective bargaining agreement between the parties to this Agreement.

GROUP II All applicants for employment who have four or more years' experience in the trade and who have passed a journeyman's examination given by a duly constituted Local Union of the IBEW.

GROUP III All applicants for employment who have two or more years' experience in the trade, are residents of the geographical area constituting the normal construction labor market and who have been employed for at least six months in the last three years in the trade under a collective bargaining agreement between the parties to this agreement.

GROUP IV All applicants for employment who have worked at the trade for more than one year.

If the registration list is exhausted and the Union is unable to refer applicants for employment to the Employer within 48 hours from the time of receiving the Employer's request, Saturdays, Sundays and holidays excepted, the Employer shall be free to secure applicants without using the referral procedure, but such applicants, if hired, shall have the status of "temporary employees". The Employer shall notify the Business Manager promptly of the names and social security number of such temporary employees, and shall replace such temporary employees as soon as registered applicants for employment are available under the referral procedure.

DEFINITIONS

Normal construction labor market — defined to mean the following area:

Hardee, Highlands, Hillsborough and Polk Counties

The above geographical area is agreed upon by the parties to include the areas defined by the Secretary of Labor to be the appropriate prevailing wage areas under the Davis Bacon Act to which this agreement applies, plus the commuting distance adjacent thereto, which includes the area from which the normal labor supply is secured.

Resident — means a person who has maintained his permanent home in the above defined geographical area for a period not less than one year or who, having had a permanent home in this area, has temporarily left with the intention of returning to this area as his permanent home.

Examinations — An "examination" shall include experience rating tests if such examination shall have been given prior to the date of this agreement, but from and after the date of this agreement shall include only written and/or practical examinations given by this Local Union 915, IBEW. Reasonable intervals of time for examinations are specified as "semi-annual". An applicant shall be eligible for examination if he has four years experience at the trade.

Sec. 5. The Union shall maintain an "Out of Work List" which shall list the applicants within each group in chronological

order of the dates they register their availability for employment.

Sec. 6. Employers shall advise the Business Manager of the Local Union of the number of applicants needed. The Business Manager shall refer applicants to the Employer by first referring applicants in GROUP I in the order of their places on the Out of Work List and then referring applicants in the same manner successively from the Out of Work List in GROUP II, then GROUP III, and then GROUP IV. Any applicant who is rejected by the Employer shall be returned to his appropriate place within this GROUP and shall be referred to other employment in accordance with the position of this GROUP and his place within the GROUP. The only exceptions which shall be allowed in this order of referral are as follows:

(1) When the Employers states bona fide requirements for special skills and abilities in his request for applicants, the Business Manager shall refer the first applicant on the register possessing such skills and abilities.

(2) If the age ratio clause in this agreement calls for the employment of an additional employee or employees on the basis of age, the Business Manager shall refer the first applicant on the register satisfying the applicable age requirements provided, however, that all names in higher priority groups, if any, shall first be exhausted before such over-age reference can be made.

Sec. 7 An Appeals Committee is hereby established composed of one member appointed by the Union, one member appointed by the Employer or by the Association, as the case may be, and a Public Member appointed by both of these members.

It shall be the function of the Appeals Committee to consider any complaint of any employee or applicant for employment arising out of the administration by the Local Union of Section 3 to 6 of this Article. The Appeals Committee shall have the power to make a final and binding decision on any such complaint which shall be complied with by the Local Union. The Appeals Committee is authorized to issue procedural rules for the conduct of its business, but it is not authorized to add to, subtract from, or modify any of the provisions of this Article

and its decisions shall be in accord with this Article.

Sec. 8 A copy of the referral procedure set forth in this agreement shall be posted on the Bulletin Board in the offices of the Local Union and in the offices of the Employers who are parties to this agreement.

Sec. 9 Apprentices shall be hired and transferred in accordance with the apprenticeship provisions of the agreement between the parties.

ARTICLE V

Health and Welfare Fund

Sec. 1 (a) Effective December 1, 1972, 4½% of the gross labor payroll shall be paid into a Health and Welfare Fund. Such funds will be under a jointly administered Trust Fund that meets all applicable requirements of existing State and Federal laws. Approval by the Internal Revenue Service must be secured prior to purchase of coverage.

(b) The payment and payroll report shall be mailed on forms provided by the Trust Committee, to reach the designated depository not later than fifteen (15) days following the end of each calendar month.

ARTICLE VI

Apprenticeship and Training

Sec. 1 There shall be a Joint Apprenticeship and Training Committee of three (3) members representing the Chapter and three (3) members representing the Union. This Committee shall make local standards in conformity with the National Apprenticeship and Training Standards for the Electrical Contracting Industry governing the selection, qualifications, education, and training of all apprentices. It shall also be responsible for training journeymen and others. These local standards will be promptly agreed upon by the parties to this agreement and shall be registered with the National Joint Apprenticeship and Train-

ing Committee and the appropriate State or Federal Apprenticeship Registration Agency.

Sec. 2 Members of the Joint Apprenticeship and Training Committee shall be selected by the party they represent. Their term of office shall be three years unless removed by the pary they represent or unless they cease to be employed by or cease to be a party to this agreement. The term of one Chapter and one Union representative shall expire each year with successors to be determined in the same manner as the original appointments were made. A Committee member may succeed himself. Each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting.

The Committee shall select from its membership, but not both from the same group, a Chairman and a Secretary who shall retain voting privileges.

The Committee shall meet at least once a month and also when called by the Chairman.

Sec. 3 (a) The Committee shall supervise all matters involving apprenticeship training in conformity with the provisions of this agreement and the registered local Apprenticeship Standards. In case of a deadlock, the matter in dispute shall be referred to the parties to this agreement for settlement. Any proposed change in this agreement pertaining to apprenticeship and to training should first be considered by the Committee for their recommendation before being acted upon by the parties to this agreement.

(b) The Committee may establish or authorize a Joint Sub-Committee to be similarly constituted and selected for authorized training programs other than apprentice training programs.

Sec. 4 (a) In order to provide diversity of training or work opportunities, the Committee shall have full authority to transfer apprentices from one job or employer to another. All transfers and assignments for work shall be issued by the Committee through the referral office.

(b) The Committee is hereby instructed and authorized to employ a full-time Training Director at such time as is possible and practical.

The Committee shall delegate to the Director that responsibility and authority deemed necessary by the Committee.

Sec. 5 All apprentices must enter the program through the Committee and shall not be eligible for employment until they have been indentured to the Committee. An apprentice who has completed his probationary period may be removed from training by the Committee, in accordance with its rules, for cause. Such removal by the Committee also cancels his classification of apprentice and the opportunity to complete his training.

Sec. 6 An employer shall employ only indentured apprentices secured from the Committee. The Committee shall allow each qualified employer a ratio of one apprentice to three (3) journeymen but only when indentured apprentices are available. Such ratio shall not be exceeded on any job. (This does not prevent one apprentice from working on a job when there are less than the maximum ratio of journeymen on that job.)

The ratio of one apprentice to three journeymen is to be applied as follows:

1 Journeyman and 1 Apprentice
2 Journeymen and 1 Apprentice
3 Journeymen and 1 Apprentice
4 Journeymen and 2 Apprentices
5 Journeymen and 2 Apprentices
6 Journeymen and 2 Apprentices
7 Journeymen and 3 Apprentices

After the seventh (7th) journeyman and the third (3rd) apprentice, the ratio shall be one (1) apprentice to each additional three (3) journeymen.

Sec. 7 An apprentice shall be under the direct personal supervision of a journeyman at all times. When a journeyman

and an apprentice are working together and it becomes necessary for the journeyman to leave for a short period of time, it should not be necessary for any apprentice to accompany the journeyman. An apprentice shall not be permitted to work alone on any job, however, regardless of type of work involved nor regardless of the length of time needed to do the job, except as provided in this section.

Sec. 8 The parties to this agreement shall enter into a Joint Apprenticeship and Training Trust Fund Agreement which shall conform to Section 302 of the Labor-Management Relations Act of 1947, as amended.

The Trustees authorized under this Trust Agreement are hereby authorized to determine the reasonable value of any facilities, materials, or services furnished by either party.

All Funds shall be disbursed in accordance with this Trust Agreement.

Sec. 9 Effective December 1, 1975, all employers subject to the terms of this agreement shall contribute ten cents (10¢) per man hour worked for each employee of their gross monthly labor payroll.

Sec. 10 Maximum tool kit for apprentices through three (3) years (4th year apprentice tool kit same as for journeymen):

1 Pair Side Cutting Pliers
2 Adjustable Pliers
1 Pocket Knife
1 Torpedo Level
1 Hack Saw Frame
1 6" Rule
2 Screw Drivers (not over 8" blade)
1 Hammer (claw or ball pean 16 oz. maximum)

ARTICLE VII

Vacation Fund

Each employer shall contribute an amount equal to 4% of the employee's gross labor payroll to the Local Union 915 Vaca-

tion Fund on behalf of each employee who is employed pursuant to the terms of this agreement, which fund shall be a jointly administered trust fund that meets all applicable requirements of existing State and Federal Laws.

Payment to the Fund shall be forwarded to a designated depository not later than fifteen (15) calendar days following the end of each calendar month.

ARTICLE VIII

Local Pension Fund

Effective December 1, 1975, the Employer shall contribute three percent (3%) of gross labor payroll to the Local Pension Fund which shall be established in accordance with all federal and state laws.

ARTICLE IX

Electrical Industry Accounts

All payments to the respective accounts pursuant to the terms of this agreement shall be listed on joint forms provided for such. All forms are to be typewritten.

The payment and form must reach the Trustees or their agent not later than fifteen (15) days following the end of each calendar month for which they are due. After said fifteen (15) days, the Union may remove all employees of the delinquent employer. Such removal does not constitute a breach of this agreement.

The cost of the forms shall be borne by each of the respective accounts to which payments are made.

Employers who fail to remit as provided above shall be subject to having this agreement terminated upon seventy-two (72) hours notice in writing served by the Union, provided the employer fails to show satisfactory proof that the required payments have been made.

In the event that Employers fail to remit all payments to the respective accounts pursuant to the terms of this agreement within thirty (30) days after the same shall be due and it shall become necessary for the Union to place the collection of said payments in the hands of an attorney, then in that event the Employer shall be responsible to the Union for all costs in connection with the collection of said payments, including a reasonable attorney's fee, which shall not be less than 15% of the delinquent amount.

SIGNED FOR FLORIDA WEST COAST CHAPTER NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION	SIGNED FOR LOCAL UNION 915 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
_____	_____
Chairman, Tampa Division	President
_____	_____
Chapter Manager	Business Manager
_____	_____
Date	Date

MEMORANDUM OF AGREEMENT

RE: CLARIFICATION OF SENIOR GENERAL FOREMAN PROVISION

In accord with directive of Article I, Section 6 (e) of the Collective Bargaining Agreement between Florida West Coast Chapter, NECA and Local 915, International Brotherhood of Electrical Workers, we, the undersigned, stipulate the following provisions as to Senior General Foreman to prevail as if the same had been made a part of this Agreement:

> When more than one General Foreman is required, one General Foreman shall become Senior General Foreman. The Senior General Foreman shall be in charge of the General Foreman. General Foreman shall give orders to foremen only.

SIGNED FOR FLORIDA WEST COAST CHAPTER, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Dean J. McDonald

Chapter Manager

11-26-75

Date

SIGNED FOR LOCAL 915, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

J. G. Cain

11-24-75

Date

Oct 25 8:08 A.M. '76 **EXHIBIT 8**

NECA-GRAM

Received
Hamilton Electric

FLORIDA WEST COAST CHAPTER NATIONAL
ELECTRICAL CONTRACTORS ASSOCIATION, INC.
2103 West Cass Street Tampa Telephone (813) 253-0087
Tampa, Florida 33606 St. Pete-Clearwater (813) 446-3079
#76-49 October 22, 1976

NATIONAL ELECTRICAL BENEFIT FUND

Effective July 1, 1977, the NEBF Contribution for all union contractors will be increased to 3%. Also, a new Industry Fund will be established, effective July 1, 1977, making it mandatory that all union electrical contractors contribute an amount equal to 1% of the gross labor payroll which will be forwarded monthly to the NECA Office in about the same manner as you are presently sending your NEBF contributions. This action was taken at the Governors' Meeting of the National Electrical Contractors Association Meeting held October 8, 1976. Several other changes were also included in the new Agreement which will be published at a later date. If there is any further information you need, contact the Chapter Office.

Dean J. McDonald
Manager

DJM:jm

AN ASSOCIATION OF
PROFESSIONAL ELECTRICAL CONTRACTORS